

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
-----x
UNITED STATES OF AMERICA,

20-CR-29 (RJA-HKS)

vs.

DEVANTE NANCE,
Defendant.

Buffalo, New York
August 13, 2021

-----x
SUPPRESSION HEARING

TRANSCRIPT OF PROCEEDINGS
BEFORE MAGISTRATE JUDGE H. KENNETH SCHROEDER, JR.
UNITED STATES MAGISTRATE JUDGE

JAMES P. KENNEDY JR., ESQ.
United States Attorney
BY: LAURA A. HIGGINS, AUSA
BY: EVAN K. GLABERSON, AUSA
Federal Centre
138 Delaware Avenue
Buffalo, New York 14202

FOR DEFENDANT: MEYERS BUTH LAW GROUP PLLC
BY: CHERYL MEYERS BUTH, ESQ.
21 Princeton Place
Orchard Park, New York 14127

TRANSCRIBER: Diane S. Martens
dimartens55@gmail.com

(Proceedings recorded electronic audio recording,
transcript produced by computer.)

1 I N D E X

2 **Jake Giarrano**

3 Direct Examination by Mr. Glaberson	4 - 27
4 Redirect Examination by Mr. Glaberson	58 - 63
5 Redirect Examination by Mr. Glaberson	78 - 81
6 Examination by Ms. Higgins	65 - 78
7 Cross-Examination by Ms. Meyers Buth	27 - 58
8 Recross-Examination by Ms. Meyers Buth	81 - 84
9 Examination by Judge Schroeder	63 - 65
10 Examination by Judge Schroeder	84 - 86

10 **Ronald Ammerman**

11 Direct Examination by Mr. Glaberson	87 - 96
12 Cross-Examination by Ms. Meyers Buth	96 - 116
13 Examination by Judge Schroeder	116 - 120

14

15

16 **EXHIBITS**

RECEIVED

17 Government Exhibit 3	78
18 Government Exhibit 4	17
19 Government Exhibit 5	121
20 Government Exhibit 9A and 9B	94
21 Defendant's Exhibit A	78

22

23

24

25

U.S. vs. Nance - 20-CR-29

PROCEEDINGS

* * *

4 **(WHEREUPON**, the defendant is present.)

5 **THE CLERK:** This is United States vs. Devante Nance,
6 docket number 20-CR-29-A.

7 This is a suppression hearing.

8 Assistant United States Attorneys Laura Higgins and Evan
9 Glaberson appearing on behalf of the government.

10 And Cheryl Meyers Buth appearing with defendant.

11 | **MAGISTRATE JUDGE SCHROEDER:** Good morning.

12 MS. MEYERS BUTH: Your Honor, good morning.

13 **MAGISTRATE JUDGE SCHROEDER:** We're here for a
14 suppression hearing. Are we ready to proceed?

15 MR. GLABERSON: We are.

16 MS. MEYERS BUTH: Yes, Judge.

17 MAGISTRATE JUDGE SCHROEDER: All right.

18 MR. GLABERSON: Judge, just one point of clarification.

19 From the text order of August 11th, am I to understand
20 that after the review of the materials requested by defense
21 under Rule 17 that your finding that those two
22 investigations, are neither material or relevant to these
23 proceedings means we cannot -- we will not expect any
24 cross-examination about those matters?

25 **MAGISTRATE JUDGE SCHROEDER:** Well, I didn't say anything

U.S. vs. Nance - 20-CR-29

1 about cross-examination. I merely said that there would be
2 no requirement to produce those materials in the personnel
3 file.

4 **MR. GLABERSON:** Understood.

5 Absent those materials, I believe the only basis for
6 questions on cross-examination for those incidents about a
7 use of force don't bear on the witness' credibility in any
8 way and also would be a Buffalo news article that is based on
9 information that only the writer knows, so.

10 **MAGISTRATE JUDGE SCHROEDER:** Well, under the rules of
11 evidence, you have remedy.

12 **MR. GLABERSON:** Understood.

13 **MAGISTRATE JUDGE SCHROEDER:** For your edification,
14 Ms. Meyers Buth, the government did produce in-camera
15 materials to me regarding the contents of personnel files of
16 the two officers involved in this matter, which I reviewed
17 and after having so reviewed the materials, I concluded that
18 the events or incidents described in those materials, in my
19 opinion, provided nothing of a material or relevant
20 relationship to the issue at hand in this case.

21 **MS. MEYERS BUTH:** Thank you, Judge.

22 **MAGISTRATE JUDGE SCHROEDER:** And, therefore, I found
23 that the government was not required to turn it over as
24 Giglio or Jencks materials.

25 **MS. MEYERS BUTH:** Understood, thank you.

U.S. vs. Nance - 20-CR-29

1 **MAGISTRATE JUDGE SCHROEDER:** All right.

2 **MR. GLABERSON:** So our first witness is going to be
3 police officer Jake Giarrano.

4 **MAGISTRATE JUDGE SCHROEDER:** All right.

5 **MR. GLABERSON:** I can get him from the haul way.

6 **MAGISTRATE JUDGE SCHROEDER:** Yes.

7

8 **JAKE GIARRANO**, called as a witness, being duly sworn,
9 testifies as follows:

10 **MR. GLABERSON:** May I inquire.

11 **MAGISTRATE JUDGE SCHROEDER:** Yes.

12 **DIRECT EXAMINATION BY MR. GLABERSON:**

13 Q Good morning, Officer Giarrano.

14 A Good morning.

15 Q Can you tell us what you do for a living?

16 A I'm a patrol officer with the Buffalo department.

17 Q Did you also slide your microphone?

18 A I'm a patrol officer with the Buffalo Police
19 Department.

20 Q And how long have you done that job?

21 A Coming up on five years.

22 Q And how far did you go in school?

23 A I have a Bachelor's degree.

24 Q And when you finished college, what process did you
25 follow to join the police department?

U.S. vs. Nance - 20-CR-29

1 A I took a civil service exam and when my name was
2 selected, I went through a series of tests, physical, a psych
3 exam and a personality interview and then I went through six
4 months at the police academy.

5 Q Could you just briefly summarize what it means to
6 go through six months at the police academy?

7 A It's just a general academy that covers topics and
8 how the Penal Law, the V and T, narcotics recognition of
9 driving and defensive tactics, gun range, et cetera.

10 Q And you passed and graduated from the academy?

11 A I did.

12 Q And what was your sign -- could you just tell us
13 what your assignments were after you finished the academy and
14 became a police officer?

15 A I was trained in A District for, I believe it's
16 three months and then I transferred to E district for a year
17 which is Bailey Langfield and then C District where I've been
18 the past three and a half years.

19 Q And when, approximately, did you get to C District?

20 A I believe in 2018 at some time.

21 Q Now, you said you were trained in A district for
22 three months, what is that?

23 A It's FTO training so you're assigned to a senior
24 officer and you just -- you're his partner for three months.

25 Q And FTO means what?

U.S. vs. Nance - 20-CR-29

1 A Field training officer.

2 Q I think before you mentioned you were trained on V
3 and T. What is V and T?

4 A Vehicle and traffic laws.

5 Q Now, could you just tell us what, in general, your
6 duties are as a patrol officer in C District?

7 A I'm a detail car which is not a sector car so we
8 only respond to violent calls, robberies, shots fired,
9 shootings gun calls and we handle a lot of 311 complaints and
10 we also look for suspects for the detectives and we assist
11 specialty units, intelligence, narcotics.

12 Q Now, in February of 2019, you were working in C
13 District doing that job at that time?

14 A I was.

15 Q And just a little bit more specifically what's the
16 difference between a regular patrol and a detail car?

17 A Regular patrol car is assigned to a sector.
18 There's four sectors in every district. Your dispatched
19 calls in those sectors and sometimes other sectors as an
20 80 (phonetic) car or a detail car. You are sometimes
21 dispatched to calls, the high priority ones, like I said,
22 shootings, shots fired, robberies, et cetera but you assist
23 narcotics and intelligence. You ride around. You do mostly
24 proactive police work.

25 Q And did you have a partner in February of 2019?

U.S. vs. Nance - 20-CR-29

1 A I did.

2 Q And who was that?

3 A Ronnie Ammerman.

4 Q And about how long during that period did you work
5 with him?

6 A Ron and I started riding together right when I got
7 to C District so from 2018 until now we're still partners.

8 Q Okay. Now, what tour, in other words, what hours
9 were you working in -- on February 5th, 2019?

10 A We work 3:30 p.m. to 1:30 a.m.

11 Q Every day that you work?

12 A Yes.

13 Q And how does your schedule in terms of days on and
14 days off work?

15 A We work four days on, four days off, four days on,
16 three days off.

17 Q Okay. And leading up to February 5th, do you
18 remember how many days off you had prior to February 5th?

19 A It was three or four.

20 Q So you had been, February 5th was your first day
21 back?

22 A Yes.

23 Q Can you tell us and take us through when you got to
24 work that day, what you did, what you remember?

25 A Usually when I arrive at work on the first day, I

U.S. vs. Nance - 20-CR-29

1 go through the reports of crimes that occurred on our days
2 off, shots fireds, shootings, et cetera, open cases.

3 Q And how do you do that?

4 A Through our computer.

5 Q And explain what the setup is when you get into the
6 office, your C District office, what's the first thing you
7 do, I mean, do you arrive in uniform?

8 A I do.

9 Q And you're a uniformed police officer?

10 A Yes.

11 Q And on that day you were wearing a uniform?

12 A Yes.

13 Q So you show up. Just take us through where you go,
14 where the computers are and what kind of meeting you have
15 before you go on the street?

16 A You enter the station house. You go into the
17 locker room. You get your gear on, your belt, your vest.
18 From there -- we have a briefing at sometime between roughly
19 3:30 and 4, depends on the day when it starts. From there,
20 you're kind of free to do as you want until your car returns
21 to the station house, if it's not there.

22 I usually log on to the computer, check my work
23 emails, look at open reports and cases from the days prior,
24 shootings, weapons recovered, shots fired for information to
25 help me with my work week.

U.S. vs. Nance - 20-CR-29

1 **Q** And on February 5th, on that specific day, can you
2 remember any specific reports you looked at and what
3 happened?

4 **A** I clicked on an assault report from 28 Norway.

5 **Q** And why did you do that?

6 **A** Because our shootings, if they're nonfatal, they
7 show up as assaults.

8 **Q** So, you got to click on the assault to figure out
9 what it's about?

10 **A** Yes.

11 **Q** There's no way to tell a shooting from something
12 else?

13 **A** No.

14 **Q** And --

15 **A** Not until you click.

16 **Q** And -- all right. I'm going to show you what's
17 marked Government Exhibit 3 for identification. I'm also
18 showing a copy of the exhibit to counsel. If I may approach
19 the witness?

20 **MAGISTRATE JUDGE SCHROEDER:** Yes.

21 Do I have an exhibit book?

22 (Indiscernible audio.)

23 **MAGISTRATE JUDGE SCHROEDER:** Okay.

24 **Q** So could you tell us what we're looking at in
25 Government Exhibit 3 for identification?

U.S. vs. Nance - 20-CR-29

1 A This is a Buffalo police assault report that would
2 be printed from the computer.

3 Q How does that relate to what we were just talking
4 about?

5 A If -- as I'm looking up the reports, if I were to
6 click on a report and hit print, this is what would come out.

7 Q Well, I'm sorry, you were just mentioning that you
8 clicked on a report for 28 Norway Park, is that the report in
9 substance of what you were looking at?

10 A It is.

11 Q What you were just talking about?

12 A It is.

13 Q Okay. Now, is that -- how do you view it on the
14 screen, could you explain that to us?

15 A It's very similar to this but it is tabbed. So you
16 click on a persons involved and it would give you the
17 offender and the complaint. Then there's a separate tab for
18 like the incident, where it occurred, the address, street,
19 and it would elaborate on some of that information and then
20 there's the charges and the narrative.

21 Q And as of 3:30 or so that afternoon on
22 February 5th, 2019, when you were reviewing that report, had
23 there been an arrest made?

24 A No.

25 Q So is that information updated after the fact?

U.S. vs. Nance - 20-CR-29

1 A Yes. So, on the report here where it says cleared
2 by arrest, it would have said that day "investigation
3 pending".

4 Q In fact, is that what it said when you viewed it?

5 A Yes.

6 Q And --

7 **MAGISTRATE JUDGE SCHROEDER:** Wait. I'm sorry. I'm not
8 following.

9 You asked him if he was arrested. He said no. And then
10 you asked if there was an arrest and he said, well, it shows
11 that it was cleared by arrest that day. Which is it?

12 Q Could you just explain what you're talking about,
13 Officer Giarrano?

14 **MAGISTRATE JUDGE SCHROEDER:** Was he arrested on
15 January 30th or not?

16 **THE WITNESS:** If that was the day of this arrest -- yes
17 -- or no, he was not arrested on January 30th, I'm sorry.

18 **MAGISTRATE JUDGE SCHROEDER:** All right. Does it show
19 when he was arrested?

20 **THE WITNESS:** It, he was arrested on the 5th of
21 February.

22 **MAGISTRATE JUDGE SCHROEDER:** Where?

23 **THE WITNESS:** On January 30th, the report was done and
24 it was inputted into the computer.

25 **MAGISTRATE JUDGE SCHROEDER:** Okay. Just for my

U.S. vs. Nance - 20-CR-29

1 edification, where does it show on Exhibit 3 that he was
2 arrested on February 5th?

3 **THE WITNESS:** It, it does not on this report. Once a
4 report is entered, it's entered on the occurrence day which
5 is January 30th, and where it says status, which is two lines
6 under the Buffalo police logo. The day I would have looked
7 at the report, February 5th, he was not arrested for this
8 incident so it would have said "investigation pending".
9 After my arrest on the 5th, it gets updated by central
10 booking to "cleared by arrest".

11 **MAGISTRATE JUDGE SCHROEDER:** So you're arresting him on
12 the 5th of February?

13 **THE WITNESS:** Yes.

14 **MAGISTRATE JUDGE SCHROEDER:** For what?

15 **THE WITNESS:** For the report from January 30th for the
16 assault report.

17 **MR. GLABERSON:** Well, if we could -- I'm sorry --

18 **MAGISTRATE JUDGE SCHROEDER:** No. I'm confused by all of
19 this and it's not making sense to me and I'm the one that has
20 to decide.

21 **MR. GLABERSON:** I understand.

22 **MAGISTRATE JUDGE SCHROEDER:** I have a police report,
23 Government Exhibit 3, that indicates that there was an
24 incident that occurred allegedly on January 30th, 2019, at
25 1930 hours, was a Wednesday and an investigation was made,

U.S. vs. Nance - 20-CR-29

1 apparently on that date and then there's an entry that
2 appears as having been cleared by arrest. When I look in the
3 upper right-hand corner of Government Exhibit 3, I see this
4 report, the one I'm holding in my hand, Government Exhibit 3
5 as having a transport date and time of January 30th, 2019,
6 21:18 hours which would indicate to me that Exhibit 3 was
7 prepared on January 30th, 2019, at 21:18 hours.

8 **THE WITNESS:** So --

9 **MAGISTRATE JUDGE SCHROEDER:** Am I right or not?

10 **THE WITNESS:** The report that was inputted --

11 **MAGISTRATE JUDGE SCHROEDER:** No. Just look at the upper
12 right-hand corner.

13 **THE WITNESS:** Yes, that's the report time and date when
14 the report was entered.

15 **MAGISTRATE JUDGE SCHROEDER:** Now, the entry "cleared by
16 arrest", when was that entry made?

17 **THE WITNESS:** That entry would have been added -- the
18 "cleared by arrest" would have been added after the arrest
19 was made which was on 2/5/2019.

20 **MAGISTRATE JUDGE SCHROEDER:** Then why wouldn't there be
21 a report date and time of 2/5/2019?

22 **THE WITNESS:** Because the arrest is made on the original
23 report.

24 **MR. GLABERSON:** And if I could clarify something, your
25 Honor.

U.S. vs. Nance - 20-CR-29

1 **MAGISTRATE JUDGE SCHROEDER:** Please do.

2 **Q** At the bottom of Exhibit 3, is there a printed
3 date?

4 **MAGISTRATE JUDGE SCHROEDER:** Yeah, I see a date of
5 April 8th, 2019. It still isn't February 5th.

6 **Q** When you were reading the report before your tour
7 started before you hit the street February 5th, 2019, that
8 line --

9 **MAGISTRATE JUDGE SCHROEDER:** Which line?

10 **Q** That line at the top of the report status.

11 What did you see before you went out on to the
12 Street?

13 **A** "Investigation pending".

14 **Q** And --

15 **MAGISTRATE JUDGE SCHROEDER:** Do we have a copy of that
16 report?

17 **MR. GLABERSON:** We do not.

18 **Q** And, Officer, your computer system, how do the
19 entries get updated over time?

20 **A** Upon making the arrest on February 5th, when we
21 brought him to central booking, the report technicians at
22 central booking change it to "cleared by arrest" because it
23 was "investigation pending" prior to the arrest being made.

24 **MS. MEYERS BUTH:** Judge, I object unless we have a
25 different exhibit to tell about who changed it, why it was

U.S. vs. Nance - 20-CR-29

1 changed, how it was changed, if this officer didn't do it.

2 **MAGISTRATE JUDGE SCHROEDER:** Did he?

3 **MR. GLABERSON:** The officer is testifying about how
4 he -- the system he uses every day --

5 **MAGISTRATE JUDGE SCHROEDER:** No, did this officer make
6 any changes?

7 **MR. GLABERSON:** I mean --

8 **MAGISTRATE JUDGE SCHROEDER:** It's a simple question.

9 **MR. GLABERSON:** I can ask it.

10 **MAGISTRATE JUDGE SCHROEDER:** That's what I'm asking you
11 to do.

12 **Q** So, Officer, could you explain, do you
13 physically --

14 **MAGISTRATE JUDGE SCHROEDER:** No, no. Just ask him if he
15 was the officer that made the changes.

16 **Q** Did you make changes to this report yourself?

17 **A** No, a report technician does.

18 **MAGISTRATE JUDGE SCHROEDER:** Objection sustained.

19 **Q** So explain what information you had after reviewing
20 what you reviewed on February 5th at around 3:30 or shortly
21 thereafter on February 5th, 2019, what was the next step
22 after you reviewed the investigation pending report in your
23 system?

24 **A** I read the report and it stated that the
25 complainant identified Mr. Nance as the suspect and an

U.S. vs. Nance - 20-CR-29

1 assault, a felony assault.

2 Q Were you -- did you know where that had happened?

3 A I did. 28 Norway.

4 Q And what did you do after you learned the name of
5 the suspect was Mr. Devante Nance?

6 A I pulled up his mugshot on a program called Web
7 RCKE (phonetic) and I showed it to my partner and asked him
8 if he recognized Mr. Nance.

9 Q And who's your partner?

10 A Ron Ammerman.

11 Q Before that day had you ever heard of or met
12 Mr. Nance before?

13 A I had not.

14 Q I'm going to show you what's marked as Government's
15 Exhibit 4 for identification.

16 Can you tell me what that is?

17 A This is the printout of a Web RCKE mugshot program.

18 Q Now is that exactly what you saw that day?

19 A Yes.

20 Q Or is that a screen shot you took more recently?

21 A I took this more recently but this is what I would
22 have looked at that day.

23 Q Is that --

24 MS. MEYERS BUTH: I object.

25 Q That --

U.S. vs. Nance - 20-CR-29

1 **MS. MEYERS BUTH:** Same objection as to Government
2 Exhibit 3.

3 **MAGISTRATE JUDGE SCHROEDER:** Yeah, what he would have --
4 sustained.

5 **Q** The question is: Are those the photos that you
6 looked at before you went on to the street --

7 **A** Yes.

8 **Q** -- that night?

9 **MR. GLABERSON:** So I would offer Government Exhibit 4
10 into evidence.

11 **MS. MEYERS BUTH:** Judge, I object unless Government 4 is
12 what the officer actually looked at.

13 **MAGISTRATE JUDGE SCHROEDER:** Sustained.

14 **Q** Officer, is that a fair and accurate representation
15 of the photos depicted on that exhibit, is that a fair and
16 accurate depiction of the photos you looked at prior to you
17 going out into the field on February 5th, 2019?

18 **A** Yes.

19 **MAGISTRATE JUDGE SCHROEDER:** Overruled.

20 **MS. MEYERS BUTH:** I --

21 **MAGISTRATE JUDGE SCHROEDER:** Your objection is noted.

22 **MS. MEYERS BUTH:** Thank you.

23 **MAGISTRATE JUDGE SCHROEDER:** Government Exhibit 4 is
24 received in evidence over objection.

25 **Q** Now, after you reviewed these reports and these

U.S. vs. Nance - 20-CR-29

1 mugshots, what did you do next?

2 A My partner and I went on patrol.

3 Q And about what time did you leave C District
4 station?

5 A Roughly 4 p.m.

6 Q And what happened next?

7 A We drove out on patrol and we were traveling
8 northbound on Norway and we saw the suspect, Mr. Nance,
9 walking towards 28 Norway.

10 Q Now, when you say we, I want you to talk about what
11 you personally observed.

12 A Yes.

13 Q First off, who was driving and who was the
14 passenger?

15 A Ron was driving. I was the passenger.

16 Q And how did you get from C District to Norway Park?

17 A It's very close to the station house. There's a
18 variety of ways we could have gotten there that day.

19 Q And to the best of your memory is that the first
20 place you went after you left the station?

21 A Yes.

22 Q And describe what you saw -- where you were when
23 you first saw Mr. Nance?

24 A We turned on to Norway from Best Street and we
25 traveled northbound on Norway and we saw Mr. Nance walking.

U.S. vs. Nance - 20-CR-29

1 **Q** You -- I'm sorry.

2 **A** Myself, I saw Mr. Nance walking southbound on the
3 west side of the street towards 28 Norway.

4 **Q** Now, what was the lighting like at about shortly
5 after 4 p.m. on February 5th, 2019?

6 **A** It was still light out.

7 **Q** And what was the traffic on Norway Park like in
8 terms of vehicle traffic?

9 **A** It's light.

10 **Q** And were there other people on the street walking
11 around?

12 **A** I don't believe so.

13 **Q** Now, what did you see Mr. Nance do?

14 **A** Mr. Nance looked at our marked patrol vehicle and
15 they know as we drove by, he continued to look back at us.

16 **Q** Where did you -- where did your vehicle travel
17 after he looked back at you?

18 **A** There's a median on Norway so we traveled,
19 continued to travel northbound until we hit Dodge, which is
20 the next street, and we did a U turn to come back on the
21 other side of the street.

22 **Q** What did you see as you were traveling now -- well,
23 what direction were you traveling at that point?

24 **A** We were traveling southbound on Norway towards
25 Best.

U.S. vs. Nance - 20-CR-29

1 **Q** And what did you see as you came down the Norway
2 Park at that time?

3 **A** Mr. Nance was walking out or from 28 Norway and he
4 entered -- he walked I would say maybe three houses away and
5 then entered a parked vehicle.

6 **Q** And where was the parked vehicle, in which
7 direction was it facing?

8 **A** It was facing southbound and it was parked on the
9 right side of the road.

10 **Q** Okay. And what happened next?

11 **A** My partner and I pulled up next to the car. I
12 exited and walked around the vehicle to the passenger side.
13 And my partner exited and walked to the driver's side.

14 **Q** Where was your vehicle parked in relation to the
15 vehicle Devante Nance got into?

16 **A** Directly next to it facing southbound.

17 **Q** Were both vehicles facing southbound?

18 **A** Yes.

19 **Q** And about how much room was in between your vehicle
20 and the vehicle Mr. Nance got into?

21 **A** Maybe 3 feet.

22 **Q** What happened when you approached the vehicle,
23 could you describe the vehicle for us, also?

24 **A** It was, I believe it was a golden color, a
25 Volkswagen wagon and it had heavy tints.

U.S. vs. Nance - 20-CR-29

1 **Q** And what happened when you approached? What door
2 did you approach personally?

3 **A** The front passenger door.

4 **Q** And who was -- tell us what happened there?

5 **A** Mr. Nance was seated in the front passenger seat
6 and I asked him for identification.

7 **Q** Can you tell us what he was wearing and what you
8 remember him -- what was his reaction to you?

9 **A** I don't recall his exact clothing but he did have a
10 satchel on.

11 **Q** Explain what a satchel is?

12 **A** It's a single strap small bag that you wear over
13 your shoulder.

14 **Q** And would you -- what was the first thing you said
15 when you approached the vehicle?

16 **A** I asked him for his identification.

17 **Q** And was the window up or down?

18 **A** It would have been down at that point. I
19 approached and he rolled it down.

20 **Q** And what happened next?

21 **A** I asked him for his ID. At that point he became
22 fidgety and he kind of bladed himself away from me. He put
23 his hand over his satchel and reached in and pulled out his
24 ID so I couldn't see what was inside of it (indicating).

25 **Q** And just for the record, as you were just

U.S. vs. Nance - 20-CR-29

1 testifying, your left hand went up flat against your chest
2 and your right hand reached over the top of your left hand?

3 A Yes.

4 Q And what happened after he did that action?

5 A He handed me his ID and I confirmed that it was
6 Devante Nance from the assault report. I looked at my
7 partner and kind of gave him a head nod. And I read his ID
8 out loud so he could acknowledge that it was the person that
9 was wanted.

10 Q And what happened next?

11 A I asked Mr. Nance to step out of the vehicle, which
12 he complied with and I walked him around the front of the
13 parked car he was in to our car, which was a Tahoe. I had
14 him place his hands on the hood of the car and I went to pat
15 him down and I explained he was wanted for an assault.

16 Q And how did he react to that?

17 A At that point of the patdown, I was to the satchel
18 and I patted down the satchel and went to take it off him.
19 At that point he pushed off the patrol vehicle and attempted
20 to flee northbound between the car he was in and our marked
21 patrol car.

22 Q Where were you and where was Officer Ammerman when
23 you were patting Devante Nance down at your vehicle?

24 A I was behind him and Officer Ammerman was to the
25 left of me which would be southbound. So he was roughly

U.S. vs. Nance - 20-CR-29

1 between the rear tire of the Tahoe and the rear tire of the
2 Volkswagen so he's about 3 feet away.

3 **Q** And what happened next?

4 **A** Mr. Nance attempted to push off the car and flee
5 southbound towards my partner. My partner was able to
6 apprehend him 5 feet away and his satchel came off on the
7 ground. But as it came off, both of our hands were able to
8 kind of go into it and I was able to grab a vacuum sealed bag
9 out of it.

10 **Q** Now, explain -- just back up here. When this
11 interaction with the satchel was happening, where were your
12 hands physically when Devante Nance started to flee?

13 **A** I believe my left hand was trying to grab him and
14 my right hand kind of came around over the top of him and
15 that's how I was able to get near the bag.

16 **Q** And what was -- what were Nance's hands doing at
17 that time?

18 **A** He was trying to get to the bag while fleeing.

19 **Q** Meaning what?

20 **A** While running, he was trying to get to whatever was
21 in the bag.

22 **Q** If you could just explain what were his hands doing
23 at that time?

24 **A** His, it would be possibly his -- his right hand was
25 attempting to reach into the bag to grab whatever was in

U.S. vs. Nance - 20-CR-29

1 there.

2 Q And what happened next?

3 A Mr. Nance and my hand kind of entered or were near
4 the bag at the same time and I'm unsure if he grabbed it and
5 threw it or I was able to grab it first, the narcotics ended
6 up in my right hand. My passenger window of my patrol
7 vehicle was open so I quickly dropped it through the window
8 on to my passenger seat, front passenger seat and I assisted
9 my partner with apprehending him who was already putting him
10 in the cuffing position and cuffing him up.

11 Q Now, at the time that you originally patted him
12 down, did you pat him down for any weapons?

13 A I did.

14 Q And did you find or feel anything that resembled a
15 weapon at any point?

16 A I did not.

17 Q Now when you say narcotics, at the time you grabbed
18 this package, explain what you at that moment believed or
19 thought or knew about what you had, what the substance was
20 that you had grabbed?

21 A When I first grabbed it and got the vacuum sealed
22 bag, I thought it was possibly marijuana for -- I didn't
23 really get a look at it, like I say I dropped it right in.
24 But I have never seen fentanyl or heroin or whatever it was
25 vacuum sealed like that.

U.S. vs. Nance - 20-CR-29

1 **Q** So at the time you grabbed it, you did not know
2 what it was?

3 **A** No.

4 **Q** And after you dropped that package into your
5 vehicle, what did you do?

6 **A** I assisted Ron with, you know, he, he kind of took
7 the suspect to the ground and was cuffing him and I kind of
8 just helped out. But we were in a tight space so he kind of
9 did the cuffing.

10 **Q** Tight space meaning where?

11 **A** Between the two -- or between our patrol car and
12 the parked car.

13 **Q** What happened next?

14 **A** Once we cuffed him, we placed him in the back of
15 our patrol car and we -- at some point I radioed for some
16 more, for some assistance and another car showed up, we took
17 the driver out and placed him in that car and the driver was
18 compliant.

19 **Q** The driver of the Volkswagen?

20 **A** Yes.

21 **Q** Was that person ever arrested or detained --

22 **A** No.

23 **Q** -- beyond that?

24 **A** No.

25 **Q** What happened to that person?

U.S. vs. Nance - 20-CR-29

1 A He was released.

2 Q And drove away in his car?

3 A Yes.

4 Q And what about Mr. Nance, what happened with him?

5 A He was brought back to the station house to speak
6 with a detective and he was eventually arrested.

7 Q Did you recover at any point any currency?

8 A Yes.

9 Q Where and when did that happen?

10 A It was on Mr. Nance's person and we recovered it
11 and seized it while at 121 West Eagle which is our central
12 booking location.

13 Q And explain that process or procedure.

14 A You go into central booking and it's a secure
15 facility. There's some cameras and you count the money in
16 front of the defendant and then you also count the money at
17 the counter underneath the camera which then the Lieutenant
18 takes the money, counts it underneath their camera on the
19 back and then it's seized and there's about three or four
20 paperwork forms that you have to fill out.

21 Q Now, backing up to before you, before you went out
22 into the street, what was your understanding after reading
23 the complaint assault, pending complaint assault for assault
24 and viewing the mugshots, what was your understanding and
25 your plan if you encountered this suspect?

Giarrano - Cross - Meyers Buth

1 A He would have been arrested -- or detained and
2 brought back to the detectives and then arrested.

3 **MR. GLABERSON:** All right. I have no more questions for
4 Officer Giarrano.

5 **MAGISTRATE JUDGE SCHROEDER:** Ms. Meyers Buth.

6 **CROSS-EXAMINATION BY MS. MEYERS BUTH:**

7 **Q** Morning, Officer Giarrano.

8 A Good morning.

9 **Q** You initially indicated that you were coming up on
10 five years with BPD, correct?

11 A Yes, this January.

12 **Q** As of February 2019, you would have had three
13 years?

14 A I would have, I would have been working towards my
15 three year -- completed my second.

16 **Q** And part of your responsibilities, you indicated,
17 were to help narcotics detectives, correct?

18 A Yes.

19 **Q** You were familiar with a narcotics, right?

20 A Yes.

21 **Q** And you were in C District at the time that you saw
22 Mr. Nance, correct?

23 A Yes.

24 **Q** You had made narcotics arrests prior to
25 February 5th, 2019, correct?

Giarrano - Cross - Meyers Buth

1 A Yes.

2 Q And that was one of your primary duties, right?

3 A To, to make narcotics arrests? Yes, that's part of
4 what the detail car does, narcotics, weapons.

5 Q Serious crimes?

6 A Yes.

7 Q Okay. Not vehicle and traffic offenses usually?

8 A We would conduct 10 if not 20 vehicle traffic stops
9 a day to answer 311 complaints which are community complaints
10 at intersections for stop signs and so forth. That's part of
11 our duties as the detail car as well.

12 Q But there were no vehicle and traffic complaints
13 about the gold VW that you observed on February 5th, right?

14 A I don't believe so.

15 Q It was legally idling in front of an address,
16 right?

17 A Yes.

18 Q And so you'll agree with me that the primary
19 motivation for your investigation of that vehicle was not
20 that it had heavy tints?

21 A Yes.

22 Q The primary motivation for your investigation of
23 that vehicle was because you wanted to speak to Mr. Nance?

24 A Yes.

25 Q And it was your intent, if you could confirm his

Giarrano - Cross - Meyers Buth

1 ID, that you were going to arrest him based on the assault
2 complaint, correct?

3 A Yes.

4 Q Okay. And you were aware at that time that there
5 was no warrant issued for Mr. Nance, correct?

6 A No, there was no active warrant.

7 Q Okay. There was no warrant of any kind for
8 Mr. Nance for that assault, right?

9 A Yes, it was a pending case, not a warrant.

10 Q Okay. And there were no criminal charges that had
11 been filed against Mr. Nance as a result of that assault; is
12 that correct?

13 A I'm unsure.

14 Q Well, do you need to look at Exhibit Number 3
15 again? Does it indicate on there whether criminal charges
16 were actually filed against Mr. Nance?

17 A It states that assault second and harassment in the
18 second were cleared by the arrest so this assault call was
19 cleared with the arrest on these charges.

20 Q On which charges?

21 A It says in this report that Mr. Nance was charged
22 with assault second and harassment second.

23 Q So, so based on your reading of this report, you
24 believe Mr. Nance was arrested for felony assault and charged
25 with it?

Giarrano - Cross - Meyers Buth

1 A The, the report would indicate that it was cleared
2 by an arrest.

3 **Q** Was that the arrest that you made?

4 A Yes.

5 **Q** So, when you arrested him on February 5th, it was
6 your understanding you were arresting him for this felony
7 assault?

8 A Yes.

9 **Q** Did you ever go to court for that felony assault
10 arrest?

11 A I may have. I'm unsure. I'm in court a lot for
12 city court and county court.

13 **Q** Well this is a felony assault with a hammer.
14 Certainly you'd remember it if you went to court for it,
15 right?

16 A I, I don't remember the exact court proceedings.

17 **Q** Do you remember speaking to an Assistant District
18 Attorney about Mr. Nance being prosecuted for felony assault?

19 A I do not.

20 **Q** Do you remember filing any police reports charge
21 withing Mr. Nance with felony assault?

22 A I believe we did if, if this was cleared by an
23 arrest on these charges.

24 **Q** Do you know or have you reviewed any reports for
25 the arrest of Mr. Nance on a felony assault?

Giarrano - Cross - Meyers Buth

1 A This would be that report.

2 Q So your testimony before this court is that
3 Mr. Nance was arrested on a felony assault and this is --
4 Exhibit 3 is the only paperwork that you're familiar with
5 that would have been filed?

6 A Yes, this report would indicate that he would --
7 these assault charges were cleared by an arrest.

8 Q And you have no recollection of filing a supporting
9 deposition?

10 A No.

11 Q And certainly you know, even though you'd only been
12 on the force for a couple years, that in order to charge
13 somebody, you would have filled out a supporting deposition,
14 right?

15 A At this time in 2019, I believe we could make the
16 arrest on information and belief.

17 Q Okay. But who did the paperwork for the assault?

18 A The report technician -- oh, the original report
19 was done by police officer Kevin Quinn and Mike Goodseed and
20 now Lieutenant Quinn.

21 Q Okay. But I'm not asking about Exhibit 3. I'm
22 asking about the criminal complaint or whatever it is that
23 was signed on information and belief who did that paperwork?

24 A It would have been typed by a report technician and
25 then signed by myself or my partner.

Giarrano - Cross - Meyers Buth

1 **Q** Okay. And where is that paperwork?

2 **A** I do not know.

3 **Q** Did you speak to the prosecutor here about whether
4 that paperwork should be produced?

5 **A** I did not.

6 **Q** Do you know what the outcome of the felony assault
7 charge that you remember Mr. Nance being charged with?

8 **A** I do not.

9 **Q** Do you -- did you ever have to testify in court
10 about a felony assault charge?

11 **A** I, I did not.

12 **Q** But it's your testimony today that you were
13 arresting Mr. Nance on February 5th for felony assault?

14 **A** Yes.

15 **Q** Who asked you to go look for Mr. Nance?

16 **A** No one.

17 **Q** Who was the complainant on the assault charge?

18 **MR. GLABERSON:** Objection.

19 **MAGISTRATE JUDGE SCHROEDER:** Basis?

20 **MR. GLABERSON:** Relevance.

21 **MAGISTRATE JUDGE SCHROEDER:** No. These records leave a
22 lot to be desired and so the more we can flesh out, the
23 better it will be. Overruled.

24 **A** Mr. Watson.

25 **Q** You knew Mr. Watson prior to February 5th of 2019?

Giarrano - Cross - Meyers Buth

1 A I did not.

2 Q Did you interview Mr. Watson prior to February 5th
3 2019?

4 A I did not.

5 Q Did you read any statement that Mr. Watson gave to
6 another police officer prior to February 5th, 2019?

7 A I did not I did not.

8 Q What did you know about the basis of the assault
9 report involving Mr. Nance?

10 A Exactly what's in this report that the complainant
11 states he was shoveling snow for an older woman at 28 Norway
12 and a young black man grandson of the woman he was shoveling
13 for did come out of the house with a hammer and did attack
14 him hitting him with said hammer and the left shoulder and
15 lower left leg causing pain and discomfort.

16 Q How old was Mr. Watson?

17 A He was born in 1956 so he was 62 at the time of
18 this report.

19 Q And the part you just read, it doesn't mention
20 Devante Nance's name, correct?

21 A In the narrative it does not but he was identified
22 as the suspect --

23 Q How --

24 A -- by name.

25 Q How do you know that?

Giarrano - Cross - Meyers Buth

1 A It was listed in the report under suspect.

2 Q You weren't present when Mr. Watson gave his
3 accounts of this assault, were you?

4 A I was not.

5 Q And how Mr. Nance came to be identified as a
6 suspect, you can't say, right?

7 A I can't.

8 Q Because you never read anything, for example, a
9 statement that Mr. Watson may have given, correct?

10 A No.

11 **MAGISTRATE JUDGE SCHROEDER:** Wait a minute. No, it's
12 not correct?

13 **THE WITNESS:** No, that is correct. I'm sorry.

14 Q And so your intention on February 5th when you saw
15 Mr. Nance was to arrest him and the only basis for the arrest
16 was Exhibit 3, is that your testimony?

17 A Yes, a pending complaint.

18 Q So the arrest had nothing to do with tinted
19 windows. That was just part of the observation you made that
20 day --

21 A Yes.

22 Q -- right? Regardless whether the vehicle had
23 tinted windows, you were going to arrest Mr. Nance on the
24 assault report, correct?

25 A Yes.

Giarrano - Cross - Meyers Buth

1 **Q** And you now know that this is simply a report of an
2 incident, not a criminal charge, right?

3 **A** Yes, this is a police report for an assault.

4 **Q** Okay. And sometimes people will come into the
5 station and make reports about crimes that are never
6 followed --

7 **MR. GLABERSON:** Objection.

8 **Q** -- through on, right?

9 **MAGISTRATE JUDGE SCHROEDER:** Let her finish the
10 question. You want to repeat the question.

11 **Q** Sure. Sometimes, based on your experience, you
12 know people will come in and file a police report about an
13 incident but that doesn't lead to them being charged with a
14 crime?

15 **MAGISTRATE JUDGE SCHROEDER:** Okay, hold on.

16 **MR. GLABERSON:** Objection.

17 **MAGISTRATE JUDGE SCHROEDER:** Basis?

18 **MR. GLABERSON:** Speculation and relevance.

19 **MAGISTRATE JUDGE SCHROEDER:** No. She's asking him based
20 on his experience. Overruled.

21 **A** Yes, some police reports are made where charges are
22 not a result of it.

23 **Q** And if somebody came in and made a report and said
24 they had been attacked with a hammer and sustained serious
25 injuries, would you expect, based on your experience, that a

Giarrano - Cross - Meyers Buth

1 criminal charge would be brought?

2 **MR. GLABERSON:** Objection.

3 **MAGISTRATE JUDGE SCHROEDER:** Basis.

4 **MR. GLABERSON:** Speculation.

5 **MAGISTRATE JUDGE SCHROEDER:** Based on his experience.

6 Overruled.

7 A If -- yes, some police reports where a felony
8 assault is reported result in an arrest, some do not.

9 Q Do you know whether any pictures were taken of
10 Mr. Watson when he made this report?

11 A I do not.

12 Q What else besides this report would exist that
13 would help us flesh out what he actually said about this
14 incident?

15 A Could you repeat the question.

16 Q Sure. Right now we have a one-page exhibit,
17 one-page police report.

18 **MAGISTRATE JUDGE SCHROEDER:** Government Exhibit 3.

19 Q Government Exhibit 3. What other documents or
20 information would exist regarding the complaint about the
21 assault?

22 A About this assault? A detective interview.

23 Q Have you reviewed an interview statement that was
24 taken by a detective from Mr. Watson?

25 A I briefly watched a interview of Mr. Nance for the

Giarrano - Cross - Meyers Buth

1 pending assault charges.

2 Q Well, the interview was after you had arrested him?

3 A Yes.

4 Q Okay. I'm asking do you -- are you familiar with
5 any sort of statement or notes that may have been taken by a
6 detective if Mr. Watson was interviewed?

7 A I'm not.

8 Q Do you know for a fact as you sit here whether he
9 was ever interviewed by a detective?

10 A I do not.

11 Q Do you know whether Mr. Watson was a local drug
12 addict that C District officers were familiar with?

13 A I, I do not.

14 Q I understand that on February 5th, you had reviewed
15 some information similar to Exhibit Number 3, some report,
16 did you talk to anybody before you went out on patrol looking
17 for Mr. Nance?

18 A I don't believe so.

19 Q Was there a detective assigned to investigate this
20 assault?

21 A It would have been assigned to a detective.

22 Q Okay. Did you know before you left for patrol on
23 February 5th, who that detective was?

24 A I did not.

25 Q You didn't check with any detective or any other

Giarrano - Cross - Meyers Buth

1 personnel to find out who was assigned to investigate this
2 incident, if anyone?

3 A I did not.

4 Q And in your preparation to testify today, the
5 prosecutor did not show you a criminal complaint or
6 supporting deposition or other felony accusatory instrument
7 from Buffalo city court, did he?

8 A No.

9 Q And you're not aware of any, right?

10 A No.

11 Q But your testimony prior to my cross-examination
12 was that Mr. Nance was arrested for a felony assault, you're
13 sure of that?

14 A Yes, that's why this report was cleared by an
15 arrest.

16 Q Okay. Where would we find paperwork that could
17 verify your testimony?

18 A I'm unsure. Somewhere in the Buffalo city court
19 building.

20 Q And that's not something that you brought with you
21 or ever showed to the prosecutor, right?

22 A No. Once I sign those, they go into a court file.

23 Q And you told the prosecutor in preparation for this
24 hearing the same thing that you're testifying to, right, that
25 there was a felony assault charge that you arrested Mr. Nance

Giarrano - Cross - Meyers Buth

1 on?

2 A I believe so.

3 Q Fair to say that when you saw Mr. Nance get in the
4 vehicle, was your intention, Officer Giarrano, that you were
5 going to ask him to exit the vehicle so that you could
6 undertake the detention?

7 A Yes.

8 Q And from the time that you walked up to the vehicle
9 to the -- went around to the passenger side and asked
10 Mr. Nance for identification and got him out of the vehicle,
11 how much time elapsed?

12 A Under 30 seconds, maybe a minute, at most.

13 Q And when you told him to get out of the vehicle, he
14 did that, right?

15 A He did.

16 Q Did you open the door or did he?

17 A I don't recall.

18 Q Do you recall you said on direct you do not recall
19 what he was wearing, correct?

20 A I do not.

21 Q If I asked you whether you recalled him wearing a
22 track suit, would that refresh your recollection?

23 A He could have been. I, I just don't recall.

24 Q And certainly if, when Mr. Nance got out of the
25 vehicle, you saw any bulge, you know, or anything else you

Giarrano - Cross - Meyers Buth

1 could have frisked him right there at his vehicle, correct?

2 A Yes.

3 Q And you would have noted that somewhere in a report
4 that you saw a bulge or some other indication that he could
5 have possibly been armed, right?

6 A Yes.

7 Q And ultimately he had no weapons on him?

8 A No.

9 Q And when he was still seated in the vehicle, there
10 was nothing about the vehicle itself that was suspicious, for
11 example, no odor of marijuana?

12 A I don't believe so.

13 Q There certainly weren't any weapons visible to you
14 in the vehicle, right?

15 A No.

16 Q He wasn't acting in a threatening manner?

17 A He was -- he was nervous and did blade himself and
18 attempt to hide what was in the satchel when he took his ID
19 out.

20 Q Okay. Did he -- did he hand you the ID that he
21 took out of the satchel?

22 A Yes.

23 Q And other than that, he wasn't, didn't use abusive
24 language or fail to cooperate with you, right?

25 A Not until I explained to him that he was under

Giarrano - Cross - Meyers Buth

1 arrest for an assault charge.

2 Q Okay. And up until -- well, strike that.

3 When he was still seated in the vehicle, other than
4 asking him for identification, did you have any other
5 conversation with him?

6 A I may have. I may have, you know, asked if he had
7 any weapons on him or anything that would cause us concern.

8 Q And then you got him out of the vehicle and you
9 walked him over to your vehicle, correct?

10 A Yes.

11 Q And at that point did you tell him to put his hands
12 up on your vehicle and spread his legs to be frisked?

13 A I did say put your hands on the vehicle and frisked
14 him -- started frisking him.

15 Q And he followed those instructions, correct?

16 A He did.

17 Q And certainly if you felt that there might be
18 something in his satchel that could put you in danger, you
19 would have frisked the outside of the satchel, right?

20 A Yes.

21 Q And I assume that you did that, right, as part of
22 your pat frisk?

23 A As I was getting to that, that is when he pushed
24 off the car and began to flee.

25 Q Okay. When, when -- prior to when you were getting

Giarrano - Cross - Meyers Buth

1 to that, what else had you done to consummate the pat frisk?

2 A Prior to touching the satchel?

3 Q Mm-hmm.

4 A I probably would have, you know, checked his
5 waistband, if he had, like you said, a track suit on, any of
6 the pockets on the suit where maybe possibly a weapon could
7 be.

8 Q Had you at any point asked him to take the satchel
9 off before you made him exit the vehicle?

10 A No.

11 Q You could have done that, right, if you were
12 concerned there was something in the satchel, correct?

13 A If there possibly is something in the satchel, I
14 prefer him to touch it less for officer safety. I wouldn't
15 want him taking it off, putting it down in the car. I'd
16 rather just have him keep it on and we'll deal with it when
17 he steps out.

18 Q And what did it look like? You're calling it a
19 satchel. What did it look like?

20 A I believe it was -- I'm unsure of the color. It
21 may have been black but it's just a satchel with a pocket or
22 two in it and it goes from, you know, shoulder to hip area
23 around somebody.

24 Q So approximately how big? 3-by-5 inches,
25 2-by-3 inches? Enough to hold an ID?

Giarrano - Cross - Meyers Buth

1 A It was, it was big enough to store a weapon in it.
2 We commonly recover weapons and other things out of satchels.

3 Q Except you didn't see any bulge in the satchel that
4 would indicate there was a gun or anything else in there,
5 right?

6 A There's very small guns out there.

7 Q Yeah, but you didn't see any sort of bulge or
8 anything else that would indicate to you, upon your
9 observation of him in the vehicle, that he was armed?

10 A No. But in my past experiences, I've recovered
11 very small guns that don't create bulges, especially in a
12 larger satchel.

13 Q And you had no past experience with Mr. Nance,
14 correct?

15 A I do not believe so.

16 Q You didn't know anything about him other than what
17 you read on Exhibit 3?

18 A Yes.

19 Q So you were going to pat frisk him and search the
20 satchel regardless before you put him in the patrol car,
21 true?

22 A He was going to be patted down for weapons and I
23 don't allow anything in the back of the patrol vehicle,
24 phones, a bag, anything that could possibly hurt themselves.
25 I've seen suspects swallow narcotics and overdose. So I'm

Giarrano - Cross - Meyers Buth

1 pretty thorough with my patdown to make sure that's not an
2 option.

3 **Q** And when you put him in the patrol car, that was to
4 detain him so you could take him back to the station and he
5 could talk to a detective, correct?

6 **A** Yes.

7 **Q** In your mind he was going to be under arrest for
8 the assault?

9 **A** Yes.

10 **Q** And you told him that as you were patting him down?

11 **A** Yes.

12 **Q** And you said, Mr. Nance, I'm patting you down and
13 I'm going to put you in the patrol car because you're under
14 arrest for assault, right?

15 **A** Something -- not the exact words but yes.

16 **Q** And at some point you reached for his satchel and
17 that's when you claim that he moved away from you, right?

18 **A** Yes.

19 **Q** And your partner was standing 3 feet from where
20 this was going on?

21 **A** Yes.

22 **Q** Okay. So where was Mr. Nance going to go?

23 **A** He tried to get through my partner and flee on
24 foot.

25 **Q** After you had told him he was under arrest for an

Giarrano - Cross - Meyers Buth

1 assault, right?

2 A Yes.

3 Q Did you wind up charging him with blocking traffic?

4 A I believe so.

5 Q So how was he blocking traffic if he was between
6 your car and his car?

7 A He was -- fled from us in a roadway and because of
8 his actions, we were both park -- well, our car was parked
9 blocking traffic and we had to -- my partner had to roll
10 around and apprehend him on the ground in the street.

11 Q Okay. But you were still between the two cars when
12 you apprehended him on the street, right?

13 A Yes.

14 Q Because you told us it was a tight space?

15 A Yes.

16 Q So he hadn't really not gotten more than a foot or
17 two away from where you were pat frisking him, true?

18 A Yes.

19 Q And yet you charged him with obstructing
20 governmental administration, disorderly conduct based on
21 that, right?

22 A Yes, the fact that he fled after I told him he was
23 under arrest and would not give us his hands to be cuffed
24 while we were trying to apprehend him and the fact that
25 because of his actions, you know, he was fleeing causing, I

Giarrano - Cross - Meyers Buth

1 mean, rolling around in the street trying to make an arrest
2 and our car was blocking the traffic between the median in
3 the southbound lane.

4 Q Your car was blocking traffic?

5 A Our car parked there rolling around with him.

6 Q And you'd agree with me that if Mr. Nance didn't
7 know anything about the assault complaint, that he would
8 have -- he may have been shocked when you told him he was
9 being arrested for an assault, right?

10 A Could you repeat that.

11 Q Sure. Let me ask it a different way. Did you tell
12 Mr. Nance that there was a warrant out for his arrest for
13 assault?

14 A No, I believe I said do you have, you know, a
15 pending assault case.

16 Q Did you tell him anything about it?

17 A No.

18 Q Did he say to you anything about an assault?

19 A I don't recall.

20 Q But you could have said that, you just don't
21 remember?

22 A Yeah, he could have said that.

23 Q And if he didn't know anything about an assault,
24 and you were putting him under arrest, you can understand
25 somebody may say, wait a minute, let's talk about it and you

Giarrano - Cross - Meyers Buth

1 were, you were just going to arrest him any way, right?

2 A I mean, yeah, I told him he was under arrest and
3 that he should comply with a lawful command to, you know,
4 cooperate.

5 Q And I'm, I'm not asking you this to embarrass you
6 but you've testified before in courts of law, right?

7 A Yes.

8 Q Specifically in state Supreme Court, right?

9 A Yes.

10 Q And have there been occasions when your testimony
11 has been found not credible by a judge?

12 A There was a ruling that a judge made that I
13 disagree with.

14 Q And that was Judge Wojtaszek in Demario Robbins,
15 right?

16 A Yes.

17 Q *People vs. Demario Robbins*, indictment number
18 016812019, right?

19 A Yes.

20 Q That arrest occurred shortly after Mr. Nance's
21 arrest in this case, right?

22 A Yes.

23 Q And Mr. Robbins was a black individual who was in a
24 car that you were investigating for heavy tints, right?

25 A It was a car with tints and it was a traffic stop.

Giarrano - Cross - Meyers Buth

1 **Q** And ultimately Judge Wojtaszek issued a decision in
2 this case saying that you and Officer Ammerman were not
3 credible witnesses, did he not?

4 **A** Yes.

5 **Q** And have you viewed Judge Wojtaszek's decision?

6 **MR. GLABERSON:** Objection.

7 **MAGISTRATE JUDGE SCHROEDER:** Basis?

8 **MR. GLABERSON:** It's working far afield from the matters
9 before the court.

10 **MAGISTRATE JUDGE SCHROEDER:** No. We're going right to
11 the heart of credibility and he said he didn't agree with the
12 judge's decision so I guess I want to find out if he read it,
13 so overruled.

14 **A** Could you repeat the question.

15 **Q** Have you had an opportunity to read Judge
16 Wojtaszek's decision?

17 **A** Yes.

18 **Q** And that was on a felony gun case, correct?

19 **A** Yes.

20 **Q** And Judge Wojtaszek basically threw out the
21 evidence in that case against Mr. Robbins, didn't he?

22 **A** Yes.

23 **Q** And that was because he didn't believe you and
24 Officer Ammerman, right?

25 **A** Yes.

Giarrano - Cross - Meyers Buth

1 **Q** He said it was, at best, inconsistent on important
2 details, and, at worst, apparently tailored to overcome
3 Constitutional objections. Do you remember reading that?

4 **A** I do.

5 **Q** And in that case, just like this one, you were
6 sworn to testify under oath and you gave some testimony,
7 right?

8 **A** I did.

9 **Q** Okay. And, again, not meaning to embarrass you but
10 you've been on the force for less than five years and you
11 already have seven disciplinary actions against you?

12 **MR. GLABERSON:** Objection.

13 **MAGISTRATE JUDGE SCHROEDER:** Basis?

14 **MR. GLABERSON:** Nothing about the civilian complaint
15 is -- has any relevance to whether somebody files a complaint
16 about somebody is not relevant to.

17 **MAGISTRATE JUDGE SCHROEDER:** She didn't ask about
18 civilian complaints. She just said whether there were any
19 disciplinary actions. Overruled.

20 **A** I've taken no disciplinary actions in my career.

21 **Q** You haven't been brought up on internal charges?

22 **MR. GLABERSON:** Objection.

23 **MAGISTRATE JUDGE SCHROEDER:** Basis?

24 **MR. GLABERSON:** There's a difference between being
25 brought up on charges and actual findings.

Giarrano - Cross - Meyers Buth

1 **MAGISTRATE JUDGE SCHROEDER:** Well, first of all, we'll
2 have to find out if he's been brought up on charges.
3 Overruled.

4 A Yes, one of my cases which is in a formal hearing.

5 **Q** And that's also you're the subject of a civil
6 lawsuit in that case, right?

7 A Yes.

8 **Q** And that involved another black man who said you
9 arrested him and you claim he struggled to get away from you
10 during the arrest, right?

11 A Yes.

12 **Q** And in addition to that one, you had some
13 violations of procedures and actual -- Lieutenant Alberti
14 requested a formal hearing at one point on you, right?

15 A Yes, that is the current case that's going to a
16 formal hearing that I was offered a departmental charge on.

17 **Q** And there were --

18 A Since then the offer has been reduced from a
19 departmental charge to a conference which I, again, will be
20 going to the formal hearing on.

21 **Q** Okay. And that's part of the protocol when an
22 officer has a complaint that he didn't follow through on his
23 duties or something, right?

24 A Yes.

25 **Q** And in addition to that one, all in the six months

Giarrano - Cross - Meyers Buth

1 before and after this particular incident, you had violations
2 for failing to follow proper procedures, use of force, two
3 conduct citations, another procedures problem, and a report
4 entry problem, is that not true?

5 A Yes.

6 Q And in terms of the report entries, without getting
7 into specifics, that has to do with some of the reports that
8 we're talking about that you're able to view and input on a
9 computer system?

10 A I was exonerated on that report entry. It was not
11 my report.

12 Q Exonerated or it was found not sustained?

13 A I believe I was exonerated on that.

14 Q And there's a difference between not sustained and
15 exonerated, right?

16 A There is.

17 Q Now, in terms of, in terms of this case, did you or
18 Officer Ammerman put lights and sirens on when you pulled up
19 next to the vehicle that my client was a passenger in?

20 A I don't believe so.

21 Q Was there a reason why you did not?

22 A I don't -- I wasn't driving the vehicle so I
23 couldn't speculate as to why or why not.

24 Q If lights and sirens go on, does the dash cam
25 automatically go on in your vehicle?

Giarrano - Cross - Meyers Buth

1 A We do not have dash cams at the BPD.

2 Q None at all?

3 A No.

4 Q And you don't -- in none of the cars in Buffalo are
5 there dash cams, is that your testimony?

6 A To my knowledge, no.

7 Q And you weren't wearing body cams yet in February
8 of '19?

9 A No, we got them, I believe, shortly after.

10 Q So there's no video out there about this arrest,
11 right?

12 A No.

13 Q And you never took it upon yourself or were told to
14 go back and canvas the area where the arrest occurred for any
15 video from any of the homeowners or anything like that?

16 A No.

17 Q And other than reviewing the complaint of the
18 assault when you started your tour on February 5th, how many
19 other complaints did you review?

20 A So that day, January --

21 Q Yeah.

22 A -- or February 5th?

23 Q Yes.

24 A Like I said, I would log on to the computer and I
25 would review any real major incidents. But as I said, you

Giarrano - Cross - Meyers Buth

1 know, a felony assault to get to our shootings, our nonfatal
2 shootings, they show up as assaults so I have to click on
3 them. So I would review maybe 10 or 15 reports.

4 Q Okay. So 10 or 15 reports with 10 or 15 different
5 suspects but you decided when you saw Mr. Nance you were
6 going to arrest him, right?

7 A Yes.

8 Q Even though this had nothing to do with shooting,
9 this assault, right?

10 A It's a felony assault, but, yes.

11 Q And even though you didn't have any other
12 information other than what's on Exhibit 3, correct?

13 A Yes.

14 Q And if it turned out, Officer Giarrano, that there
15 was never a criminal charge filed or the case was simply not
16 followed through on, that would be reflected how?

17 A Could you repeat the question?

18 Q Sure. Sure. Hypothetically, if you're wrong and
19 there was never a criminal charge and there was never a
20 warrant and the assault case was never followed through on,
21 that would be reflected in what kind of document?

22 A I, I have no idea.

23 Q Would that be reflected on the same computer system
24 that you've been testifying about?

25 A No. If a complainant fails to show up to court,

Giarrano - Cross - Meyers Buth

1 that's not reflected in our police computer system.

2 **Q** What if the case never goes to court and the
3 complainant doesn't come in for a photo array and no charges
4 are ever filed, would that be reflected in the computer
5 system?

6 **A** I -- there is like I think it's called case
7 management that the detectives use where they may note
8 something like that.

9 **Q** Okay.

10 **A** But we don't have access to that always.

11 **Q** I want to show you what's been marked by the
12 government as Exhibit 5D and ask you just to take a look at
13 it and tell me if you've seen it before, okay.

14 **A** Okay.

15 **MAGISTRATE JUDGE SCHROEDER:** 5D, as in Donald?

16 **MS. MEYERS BUTH:** 5D, as in Donald.

17 **A** Thank you. Yes, so this would be case management
18 at the top.

19 **Q** Do you recall ever reviewing this particular entry
20 prior to your testimony today?

21 **A** No.

22 **Q** Did the prosecutor show you this exhibit before you
23 testified?

24 **A** I don't believe so.

25 **Q** Did you discuss with him the fact that the

Giarrano - Cross - Meyers Buth

1 complainant never came in and the case was closed without
2 ever being charged?

3 A No.

4 Q But that's what's indicated on Exhibit 5D that I
5 just showed you, right?

6 A Yes, that would be the case management notes that
7 the detectives used.

8 Q In other words, the case was closed, nobody was
9 ever charged, Mr. Nance or anybody else because the
10 complainant never came back, right?

11 A Yes, the complainant failed to cooperate.

12 Q So you never went to court for Mr. Nance, he was
13 never charged with assault and you arrested him based on a
14 report that was never followed through on, right?

15 A Yes. At the time of the arrest, he had a pending
16 case for a felony assault.

17 Q And -- well, he didn't have a pending case. There
18 had been a police report made by a complainant who failed to
19 ever follow through with filing charges, right?

20 A Yes.

21 Q Okay. And so you arrested a guy who had never been
22 charged in the first place with anything for a crime that had
23 never been followed through on?

24 A Well, the police report indicates that it was
25 cleared by an arrest.

Giarrano - Cross - Meyers Buth

1 **Q** But, but forget about what you're reading there.

2 Do you know whether he was ever prosecuted for assault?

3 **A** I do not know if he was prosecuted at the state or
4 city court level.

5 **Q** And he wasn't prosecuted by you because you'd
6 recall that --

7 **A** Well, it's not --

8 **Q** -- I'm sure?

9 **A** I mean, we could sign on the charges but once it
10 goes to the court, we have no control on these over.

11 **Q** You don't follow through on your cases after you
12 file a felony assault case with the DA?

13 **A** We can be brought into court, depending on what the
14 case is.

15 **Q** Oh. Well, something like this where someone was
16 assaulted with a hammer and evidently injured, you'd remember
17 if you talked to a DA about it, right?

18 **MR. GLABERSON:** Objection.

19 **MAGISTRATE JUDGE SCHROEDER:** Basis.

20 **MR. GLABERSON:** The hearing's about the incident on
21 February 5th not what happened in court or didn't happen in
22 court months or weeks later.

23 **MAGISTRATE JUDGE SCHROEDER:** No. She's merely asking
24 the witness whether he recalls something or not. Overruled.

25 **A** I, I make hundreds of arrests a year, so I'm in

Giarrano - Cross - Meyers Buth

1 court all the time. I just don't recall if I ever went to
2 court on this.

3 Q But just to be clear, and I'm done, based on
4 Exhibit 3, you're telling us that that was an active assault
5 warrant that you went and arrested Mr. Nance on?

6 A It wasn't a warrant. It was a pending case.

7 Q And you, without having all the background or
8 knowing anything else other than what you're reading, decided
9 you were going to arrest him on that assault case, right?

10 A Yes.

11 Q Because that was important as a young officer to
12 get a felony assault case under your belt, right?

13 A Yes, it was an arrest to make.

14 Q It would make you look good with your superiors if
15 you went out and found somebody that they had identified as a
16 potential suspect, right?

17 A It's just a felony arrest to make.

18 Q And you --

19 A I wouldn't know how it would reflect on my
20 superiors.

21 Q Sure you do, Officer Giarrano, don't ya? You're
22 telling us that you didn't think that arresting a suspect on
23 a felony assault with a hammer was going to make you look
24 good with your superiors?

25 A I, I don't know.

Giarrano - Redirect - Glaberson

1 **MS. MEYERS BUTH:** That's all I have.

2 **MAGISTRATE JUDGE SCHROEDER:** Mr. Glaberson.

3 **MR. GLABERSON:** Yes.

4 **REDIRECT EXAMINATION BY MR. GLABERSON:**

5 **Q** Officer Giarrano, you were asked about several
6 complaints that were filed, disciplinary complaints that were
7 filed against you?

8 **A** Yes.

9 **Q** Other than the pending one that you just mentioned,
10 the remaining, what was the end result of all of those?

11 **A** Exonerated or not sustained or unfounded.

12 **Q** Meaning there was insufficient evidence to proceed
13 with them?

14 **A** Yes.

15 **Q** And you were asked about a civil lawsuit?

16 **A** Yes.

17 **Q** That also is a complaint somebody filed against
18 you?

19 **A** I believe the civil lawsuit generates a complaint,
20 yes.

21 **Q** It's just a complaint alleged. No final
22 disposition or any fact finding has happened in that?

23 **A** Yes.

24 **Q** Now, getting back to what's marked as Government
25 Exhibit 3, prior to you going out into the street on

Giarrano - Redirect - Glaberson

1 February 5th, 2019, what was the information that you
2 possessed about this assault from six days earlier?

3 A I possessed a report that stated the victim was
4 assaulted with a hammer while shoveling and he named the
5 suspect that assaulted him as Devante Nance.

6 Q And what did that -- what was your understanding of
7 the import of that information?

8 A He was able to ID Devante Nance to whatever officer
9 did the report.

10 **MS. MEYERS BUTH:** Objection, Judge. He wasn't there.

11 **MAGISTRATE JUDGE SCHROEDER:** Sustained.

12 **MR. GLABERSON:** Judge, I'm asking what the officer's
13 understanding was not --

14 **MAGISTRATE JUDGE SCHROEDER:** Yeah but he's trying to now
15 tell us what somebody else was thinking.

16 **MR. GLABERSON:** I believe it's important for --

17 **MAGISTRATE JUDGE SCHROEDER:** He's trying to tell us what
18 the alleged complainant was thinking.

19 **MR. GLABERSON:** The question to the officer is: What
20 was his understanding before he went into the field that day?

21 **MAGISTRATE JUDGE SCHROEDER:** He already answered. He
22 said that somebody said they were assaulted by another person
23 with a hammer, period.

24 Q And what action, well, about how many -- what was,
25 based on the information that you possessed from this report

Giarrano - Redirect - Glaberson

1 and the viewing of Exhibit 4, what of the pictures depicted
2 in Exhibit 4, what did you believe -- what action did you,
3 would you understand you could take and what were the results
4 of that action related to that assault?

5 A Devante Nance was wanted for a felony assault.

6 Q Meaning what?

7 A That he was -- he's wanted. He was listed in the
8 report as the suspect so he was known and IDed.

9 Q Meaning that if you encountered him, what was your
10 intention and what would you have done to him?

11 A To detain, arrest and bring him to the detective.

12 Q And in this case, after the encounter that you
13 described on Norway Park, what did you and Officer Ammerman
14 do with Mr. Nance after you left Norway Park with him.

15 A We brought him to the station house to speak with
16 the detective.

17 Q And in your mind, what was your understanding of,
18 at that point who was going to make a decision about what
19 happened next in the case?

20 A The detectives.

21 Q And why is that?

22 A Because it's now their case.

23 **MR. GLABERSON:** And I'm going to offer Government
24 Exhibit 3 into evidence again.

25 **MS. MEYERS BUTH:** I object to it.

Giarrano - Redirect - Glaberson

1 **MAGISTRATE JUDGE SCHROEDER:** Based on what I've heard in
2 the testimony, it appears to me that Government Exhibit 3 is
3 not a reliable exhibit in the sense of apparently there were
4 different changes made over a period of time that don't
5 accurately reflect when they were made and by whom they were
6 made.

7 **MR. GLABERSON:** I believe the officer's explained how
8 the changes get made to the report.

9 **MAGISTRATE JUDGE SCHROEDER:** Well, he attempted to
10 explain but, quite frankly, beyond the explanation as
11 establishing anything other than there was some pretty sloppy
12 record production in this matter.

13 We start off with an official police report dated
14 January 30th, 2019, where a complainant comes to the police
15 and makes a complaint. And that report states that this was
16 done on January 30th, 2019, at apparently 19:30 hours, on a
17 Wednesday. And that the officers involved were officers
18 Quinn and Goodspeed.

19 In the upper right-hand corner, it says this report,
20 Government Exhibit 3, is dated in time as having been done on
21 January 30th, 2019, at 21:18 hours. Presumably by either
22 Quinn or Goodspeed or both.

23 And then supposedly there's an entry that says at some
24 time or other, this charge is cleared by arrest but I don't
25 know when that entry was actually made. As I have it,

Giarrano - Redirect - Glaberson

1 officer Giarrano says he made the entry but it's all
2 reflected on one document which I find, quite frankly, in
3 this day and age of technology could be somewhat mind
4 boggling, I would think there would be a second report
5 generated.

6 Q Officer Giarrano, is there an arrest noted on
7 Exhibit 3, three-quarters of the way down the page?

8 A Yes.

9 Q And when was that arrest dated?

10 A 2/5/2019 at 34 Norway Park.

11 Q And --

12 **MAGISTRATE JUDGE SCHROEDER:** But that doesn't seem to be
13 reflected on the report. What is reflected as far as the
14 change of date was when this report was printed, namely
15 April 4th, 2019, at 10:17 a.m.

16 Q Can you see the screen in front of you, Officer?

17 A I cannot.

18 **MAGISTRATE JUDGE SCHROEDER:** Hold on one second,
19 Officer.

20 A Yes, I can now but it's zoomed in pretty far.

21 **MAGISTRATE JUDGE SCHROEDER:** All right. Let the record
22 reflect we've now put Government Exhibit 3 on the ELMO and we
23 enlarged it to make it a little bit easier to try and find
24 things.

25 Q So --

Giarrano - Redirect - Glaberson

1 A If you could zoom, yeah.

2 Q To begin with at the top, we're talking about,
3 about three lines under the Buffalo police insignia, there's
4 a status line, could you explain what that means?

5 A That is the current status of the case.

6 Q As of the printing of the report?

7 A Yes.

8 Q And when you -- before you went into the field on
9 February 5th, what did you -- in that line what did you read?

10 A "Investigation pending".

11 Q Now --

12 **MAGISTRATE JUDGE SCHROEDER:** Let me interrupt. When I
13 look at that line, "cleared by arrest", there's a column says
14 entry date but we have no entry date. Why is that?

15 **THE WITNESS:** I have, I have no idea the -- down the
16 report farther --

17 **MAGISTRATE JUDGE SCHROEDER:** No. I'm talking about that
18 line. "Status: Cleared by arrest". And then if you move
19 over along that line, you see there's a column entitled
20 "entry date", which I would assume means when this "cleared
21 by arrest" entry was made --

22 **THE WITNESS:** Yes, I --

23 **MAGISTRATE JUDGE SCHROEDER:** -- is that correct?

24 **THE WITNESS:** I would not enter that so --

25 **MAGISTRATE JUDGE SCHROEDER:** Isn't that what that column

Giarrano - Redirect - Glaberson

1 is for?

2 **THE WITNESS:** Yes.

3 **MAGISTRATE JUDGE SCHROEDER:** And so no entry was made
4 when cleared by arrest was entered. Why?

5 **THE WITNESS:** I have no idea. The report technicians at
6 CB update the case.

7 **MAGISTRATE JUDGE SCHROEDER:** But you're the one that
8 said cleared by arrest, weren't you?

9 **THE WITNESS:** Yes, we did arrest the suspect.

10 **MAGISTRATE JUDGE SCHROEDER:** When did you tell the
11 technician?

12 **THE WITNESS:** It would have been on February 5th, 2019
13 that the arrest was made so that would -- the status would
14 update on that date.

15 **MAGISTRATE JUDGE SCHROEDER:** Did you review this report
16 to make sure it was accurate --

17 **THE WITNESS:** With --

18 **MAGISTRATE JUDGE SCHROEDER:** -- after you made the
19 report with the technician?

20 **THE WITNESS:** No. This is --

21 **MAGISTRATE JUDGE SCHROEDER:** You didn't?

22 **THE WITNESS:** We don't review this report after the
23 arrest.

24 **MAGISTRATE JUDGE SCHROEDER:** So you don't know how
25 accurate it is?

Giarrano - Redirect - Glaberson

1 **THE WITNESS:** (No response.)

2 **MAGISTRATE JUDGE SCHROEDER:** Is that correct?

3 **THE WITNESS:** I mean, I don't know what the report
4 technicians do.

5 **MAGISTRATE JUDGE SCHROEDER:** Objection sustained.

6 **MS. HIGGINS:** Your Honor, if I may, there's another item
7 of information on this report that --

8 **MAGISTRATE JUDGE SCHROEDER:** Please speak into a
9 microphone.

10 **MS. HIGGINS:** Thank you, Judge.

11 There's another item of evidence on this piece of --
12 this report that nobody's attention has been drawn to, I
13 don't think, yet.

14 **MAGISTRATE JUDGE SCHROEDER:** I'm sorry, you're speaking
15 too quickly and through the mask I can't understand you.

16 **MS. HIGGINS:** My apologies, Judge.

17 At this point there is an item of evidence on this
18 report or item of information on this report that I don't
19 think anybody's attention has been drawn to yet.

20 **MAGISTRATE JUDGE SCHROEDER:** Well, that isn't my job, is
21 it?

22 **MS. HIGGINS:** No, it is not, Judge.

23 **EXAMINATION BY MS. HIGGINS:**

24 **Q** I want to direct the witness' attention to this
25 header that says arrest and below it it says arrest number,

Giarrano - Redirect - Higgins

1 is that correct, Officer Giarrano?

2 A Yes.

3 Q And then there's a six digit number below that,
4 correct?

5 A Yes.

6 Q Can you explain to the judge what that number is?

7 A That would have been the arrest number assigned to
8 the case.

9 Q And when does that arrest number get assigned?

10 A At central booking when he is charged.

11 Q When he's physically in custody?

12 A Yes.

13 Q So would this number exist at the time a
14 complainant makes a report about a crime that occurred?

15 A No.

16 Q That arrest number is assigned after a person
17 accused of a crime is actually physically in custody?

18 A Yes.

19 Q So I want to continue along that line. Whose name
20 do we see there?

21 A Devante Nance.

22 Q And what do we know about the fact that there's an
23 arrest number assigned to Devante Nance?

24 A It would mean that he was arrested on this report.

25 Q And the date next to his name, is that his date of

Giarrano - Redirect - Higgins

1 birth?

2 A Yes. 12/21/1995.

3 Q And then along continuing we see the date
4 February 5th, 2019, what should we discern from that date?

5 A That is the date the arrest was made.

6 Q And what is this address?

7 A That's the address that the arrest was made at.

8 Q So is this the arrest that you've testified you
9 executed on February 5th through the course of the events
10 that you've now testified to today?

11 A Yes, I was a part of that.

12 Q And this arrest obviously did not exist on the
13 report you reviewed before you went out for your shift that
14 day?

15 A Yes.

16 Q And aside from the line here -- I'm sorry, aside
17 from the line here at the top that says "cleared by arrest",
18 and the entry of the arrest number and the details of the
19 arrest, is there anything else about this report -- I'm
20 sorry, actually and below that part, the status and the
21 arresting officers, aside from that information, is there any
22 other information that is different than what you reviewed at
23 the beginning of your shift?

24 A No.

25 Q So --

Giarrano - Redirect - Higgins

1 **MAGISTRATE JUDGE SCHROEDER:** Wait a minute. This would
2 indicate to me, unless I'm misreading it, that the arrest was
3 made by Officers States (phonetic) and Sterlis (phonetic).
4 It's underneath the heading arresting officers on that line.

5 A Ah.

6 **MAGISTRATE JUDGE SCHROEDER:** It says 174212 States,
7 ROBE001195, Sterlis, Christopher.

8 A They may --

9 **MAGISTRATE JUDGE SCHROEDER:** And this is all under the
10 heading of arrest.

11 **Q** So, Officer, why doesn't your name appear there,
12 why do their names appear there?

13 A They may have signed on the arrest but there may be
14 an error because Christopher Sterlis is a detective. So
15 sometimes the names just get messed up but they may have
16 signed on the arrest because we were processing the narcotics
17 arrest.

18 **MAGISTRATE JUDGE SCHROEDER:** So now I'm told that there
19 is an error or it may be messed up --

20 **THE WITNESS:** It would --

21 **MAGISTRATE JUDGE SCHROEDER:** -- this exhibit --

22 **THE WITNESS:** The report --

23 **MAGISTRATE JUDGE SCHROEDER:** -- is that correct?

24 **THE WITNESS:** The report technicians at central booking
25 are the ones who enter this information.

Giarrano - Redirect - Higgins

1 **MAGISTRATE JUDGE SCHROEDER:** Well, the report technician
2 wouldn't make up these names, would he or she?

3 **THE WITNESS:** Ah.

4 **MAGISTRATE JUDGE SCHROEDER:** There are Officers States
5 and Detective Sterlis, are there not?

6 **THE WITNESS:** There are.

7 **MS. HIGGINS:** So, Judge, the government's going to offer
8 this exhibit with the following caveats: That there is
9 something messed up about the arresting officers listed on
10 the arrest, that the "cleared by arrest" at the top appeared
11 differently on that day and that there is an arrest noted
12 that's different than what Officer Giarrano reviewed that
13 morning.

14 However, the reason the government's trying to offer
15 this into evidence -- and I think it's important it be
16 received in evidence with whatever caveats the Court wants to
17 make and whatever arguments the defense wants to make about
18 it -- is to make a record. Because when the parties are
19 going to argue about the legality of the stop and what
20 Officer Giarrano knew at the time he actually physically
21 encountered the defendant, it's important for this Court to
22 know and for the record to be clear, what, what he reviewed.

23 **MAGISTRATE JUDGE SCHROEDER:** I don't think there's any
24 question that the defendant Nance was arrested on
25 February 5th, 2019.

Giarrano - Redirect - Higgins

1 **MS. HIGGINS:** But, but the point of the -- the point I'm
2 trying to make, Judge, is that what Officer Giarrano knew and
3 what the government will argue about the basis in justifying
4 his encounter of Devante Nance and his pursuit of him
5 separate and apart from --

6 **MAGISTRATE JUDGE SCHROEDER:** His pursuit? He didn't
7 pursue him.

8 **MS. HIGGINS:** Well, he encountered him.

9 **MAGISTRATE JUDGE SCHROEDER:** His partner did.

10 **MS. HIGGINS:** He encountered him.

11 **MAGISTRATE JUDGE SCHROEDER:** Yeah.

12 **MS. HIGGINS:** That was the wrong word.

13 **MAGISTRATE JUDGE SCHROEDER:** He was sitting in a parked
14 vehicle.

15 **MS. HIGGINS:** But what the point is what Officer
16 Giarrano knew, this narrative and the name and that the
17 nature of the crime that this, that Devante Nance had been
18 accused of by another person and that this record existed in
19 whatever sloppy form the Court concludes it is, that it did
20 exist and that Officer Giarrano knew certain pieces of
21 information about it.

22 **MAGISTRATE JUDGE SCHROEDER:** I don't deny the existence
23 of the report. What I'm questioning is is the accuracy and
24 the validity of the report.

25 **MS. HIGGINS:** And if the --

Giarrano - Redirect - Higgins

1 **MAGISTRATE JUDGE SCHROEDER:** They are two different
2 things.

3 **MS. HIGGINS:** And if --

4 **MAGISTRATE JUDGE SCHROEDER:** If I look at things as I'm
5 supposed to: In the total context. I start off with what
6 apparently began at least in one of the other documents and
7 in the government's papers about a stop involving tinted car
8 windows.

9 **MS. HIGGINS:** Well, we've just heard --

10 **MAGISTRATE JUDGE SCHROEDER:** But this witness testified,
11 no, he was not doing anything about tinted car windows which
12 immediately causes a flag to go up, as far as I'm concerned,
13 as well what's going on here, is it "tinted car windows" or
14 is it "I read a report when I reported for duty on
15 February 5th, 2019"?

16 The next question I ask myself is if this was such a
17 serious assault on January 30th, 2019, why was nothing done
18 between that date and February 5th?

19 **MS. HIGGINS:** So, Judge, if I may, about the tints,
20 this -- Officer Giarrano testified that it was --

21 **MAGISTRATE JUDGE SCHROEDER:** He said --

22 **MS. HIGGINS:** He said it was a heavily --

23 **MAGISTRATE JUDGE SCHROEDER:** -- tint in
24 cross-examination. And let me get my notes.

25 **MS. HIGGINS:** Judge, he testified that it was a heavily

Giarrano - Redirect - Higgins

1 tinted car. It does involve a heavily tinted car. And
2 whatever --

3 **MAGISTRATE JUDGE SCHROEDER:** Wait, Ms. Higgins.

4 **MS. HIGGINS:** And whatever --

5 **MAGISTRATE JUDGE SCHROEDER:** Please.

6 Officer testified on direct that while on patrol
7 traveling north on Norway he saw the defendant walking on
8 Norway toward 28 Norway. The defendant looked at the police
9 car. As they continued in their travels, the defendant
10 continued looking.

11 The car, the patrol car then went up, made a U turn and
12 then traveled south on Norway and saw the defendant get into
13 a parked car. They pulled up along side the car and he went
14 to the passenger side within a matter of 30 seconds or less.

15 The defendant was seated in the right front seat. He
16 asked the defendant for identification because the -- they
17 hope the defendant became fidgety. The defendant handed the
18 ID to him. He gave a nod to his partner, told defendant to
19 step out of the car. Put the defendant down, told him he was
20 wanted for assault. Defendant asked for case on him and then
21 tried to run away.

22 On cross-examination, the primary motive was not tint of
23 a parked car windows. There was no question or issue about
24 tinted windows.

25 **MS. HIGGINS:** And, Judge, I --

Giarrano - Redirect - Higgins

1 **MAGISTRATE JUDGE SCHROEDER:** And yet I have these
2 written reports talking about tinted windows as a
3 justification for the action. I have the government
4 representing tinted windows were involved. Then I hear the
5 witness testify that was not the case. I have all of these
6 inconsistencies.

7 **MS. HIGGINS:** Judge, if I may --

8 **MAGISTRATE JUDGE SCHROEDER:** And this whole case depends
9 on credibility.

10 **MS. HIGGINS:** If I --

11 **MAGISTRATE JUDGE SCHROEDER:** And I have to consider all
12 of this in its totality.

13 **MS. HIGGINS:** Judge, if I may and I, I, I want to be
14 conscious of the propriety of conducting legal argument in
15 front of a testifying witness but I will say this: The
16 officer testified that the windows were heavily tinted.
17 Whether or not that --

18 **MAGISTRATE JUDGE SCHROEDER:** Well, we're going to get a
19 transcript.

20 **MS. HIGGINS:** If I may, Judge.

21 **MAGISTRATE JUDGE SCHROEDER:** We're going to get a
22 transcript.

23 **MS. HIGGINS:** I understand.

24 **MAGISTRATE JUDGE SCHROEDER:** I will rely on the
25 transcript, Ms. Higgins.

Giarrano - Redirect - Higgins

1 **MS. HIGGINS:** Okay. And I want -- and of course you
2 should, Judge. And I, I know -- the government's going to
3 argue and I think the record's going to reflect that Officer
4 Giarrano described heavily tinted windows when he was
5 describing this encounter. I don't know if they're reflected
6 in your notes, Judge, but I know the record's going to
7 reflect that.

8 What I'm saying is the stop involved heavily tinted
9 windows, whether or not that was a subjective motivation of
10 the officer in having an encounter with Devante Nance or not,
11 that shouldn't that doesn't -- there was nothing legally
12 improper about his observation of tinted windows, and then
13 his subsequent observation of Devante Nance and recognition
14 of Devante Nance -- or prior observation of Devante Nance in
15 connection to this assault.

16 **MAGISTRATE JUDGE SCHROEDER:** I didn't say there was.

17 **MS. HIGGINS:** And I think it's going to be important,
18 Judge.

19 **MAGISTRATE JUDGE SCHROEDER:** You're missing the point.
20 It has nothing to do on the issue of the legality of arrest.
21 What it does relate to is the issue of credibility.

22 **MS. HIGGINS:** Judge, I think it's going to be important
23 that this document, for whatever weight the Court wants to
24 give it, be in the record and be received as an item of
25 evidence and the defense is going to be free to argue

Giarrano - Redirect - Higgins

1 whatever about it she feels is unreliable. And your Honor's
2 going to be able to conclude whatever about it is unreliable.
3 But I think it's important for it to exist so the parties can
4 discuss it in their filings and we can deal with it in the
5 post-hearing submissions and that the district court judge,
6 upon review of this litigation, can have it in the record.

7 **MAGISTRATE JUDGE SCHROEDER:** You know what I also would
8 like in the record as an exhibit, either you or the defense
9 can supply it, and that's that decision from the Supreme
10 Court justice that Ms. Meyers Buth brought on on
11 cross-examination.

12 **MS. MEYERS BUTH:** I have an extra copy, Judge. I can
13 mark it.

14 **MS. HIGGINS:** So the government's --

15 **MAGISTRATE JUDGE SCHROEDER:** Does the government --

16 **MS. HIGGINS:** The government --

17 **MAGISTRATE JUDGE SCHROEDER:** Does the government have
18 any objection to that?

19 **MS. HIGGINS:** I haven't reviewed it, Judge. We were not
20 supplied with a copy.

21 **MR. GLABERSON:** We do have an objection.

22 **MAGISTRATE JUDGE SCHROEDER:** What's the objection? It's
23 an official court record.

24 **MR. GLABERSON:** It's --

25 **MAGISTRATE JUDGE SCHROEDER:** I can take judicial notice

Giarrano - Redirect - Higgins

1 of it, can't I?

2 **MR. GLABERSON:** Of course.

3 **MAGISTRATE JUDGE SCHROEDER:** What's your objection for
4 my seeing a decision by a Supreme Court justice of the State
5 of New York?

6 **MR. GLABERSON:** It was asked about in cross-examination.
7 It is extrinsic.

8 **MAGISTRATE JUDGE SCHROEDER:** It goes to the heart of
9 credibility, doesn't it?

10 **MR. GLABERSON:** It is an individual, a judge's opinion
11 about a specific case.

12 **MAGISTRATE JUDGE SCHROEDER:** All decisions are those of
13 an individual judge or a panel of judges. My decision is
14 going to be of an individual judge, is it not? The trial
15 judge to whom this case is assigned will make an individual
16 decision if he receives my R and R.

17 **MR. GLABERSON:** Yes.

18 **MAGISTRATE JUDGE SCHROEDER:** So that tells me nothing.
19 Of course it's an individual decision.

20 **MR. GLABERSON:** Relating to --

21 **MAGISTRATE JUDGE SCHROEDER:** I'm having a hard time
22 understanding why the government, the U.S. Attorney's Office
23 representative, is concerned about the Court receiving a copy
24 of a Supreme Court Justice, State of New York decision in a
25 case involving this witness. What's the government afraid

Giarrano - Redirect - Higgins

1 of?

2 **MR. GLABERSON:** Nothing.

3 **MAGISTRATE JUDGE SCHROEDER:** All right. So does the
4 government agree to the admission of the judge's decision, if
5 you have a copy of it Ms. Meyers Buth.

6 **MS. MEYERS BUTH:** I do, judge.

7 **MR. GLABERSON:** My, my, my position --

8 **MAGISTRATE JUDGE SCHROEDER:** Are you objecting to the
9 offer of the judge's decision?

10 **MR. GLABERSON:** Separate and apart from it being an
11 extrinsic matter related to cross-examination, no.

12 **MAGISTRATE JUDGE SCHROEDER:** It's not an extrinsic
13 matter as far as this Court is concerned. In fact, it would
14 fall under the category of Giglio. Or Brady maybe -- maybe
15 not Brady, maybe actually Brady.

16 **MR. GLABERSON:** I -- one, it very clearly was not.

17 **MAGISTRATE JUDGE SCHROEDER:** What exhibit number have
18 you attached, Ms. Meyers Buth?

19 **MS. MEYERS BUTH:** Judge, I don't have any exhibit
20 stickers.

21 **MAGISTRATE JUDGE SCHROEDER:** Lane, do you have any
22 stickers?

23 Use Defendant's Exhibit A.

24 All right. Let the record reflect that the defense has
25 offered Defendant's Exhibit A, which is a copy of a decision

Giarrano - Glaberson - Redirect

1 in the State of New York Supreme Court, County of Erie, in
2 the matter of the *People of the State of New York vs. Demario*
3 *Robbins*. And it's a decision of the Honorable Paul B.
4 Wojtaszek, W-O-J-T-A-S-Z-E-K, dated August 4, 2020.

5 Government object?

6 **MR. GLABERSON:** No.

7 **MAGISTRATE JUDGE SCHROEDER:** All right. Defendant's
8 Exhibit A is received in evidence.

9 **MS. HIGGINS:** Judge could we just have a ruling on
10 Government Exhibit 3 as well.

11 **MAGISTRATE JUDGE SCHROEDER:** I'll let it in for what
12 it's worth.

13 **MS. HIGGINS:** Thank you.

14 **CONTINUED REDIRECT EXAMINATION BY MR. GLABERSON:**

15 **Q** Officer Giarrano, could you explain in what way you
16 rely on the reports you read on the computer prior to your
17 tour every day?

18 **A** For information on what occurred on the days or
19 hours I wasn't working.

20 **Q** And what -- I mean, what do you take that
21 information that you obtain, what do you take it to be?

22 **A** It depends on the type of report but a crime was
23 committed and sometimes suspects are IDed in it, sometimes
24 they aren't.

25 **Q** And have you personally taken reports from

Giarrano - Glaberson - Redirect

1 complainants of assaults of other crimes?

2 A Yes.

3 Q What do you do with them when you take those
4 reports as a patrol officer?

5 A You take the report, you input it in the computer
6 and you forward it to a lieutenant for approval.

7 Q Did you follow up on any of the reports that you
8 take in the field as a patrol officer?

9 A Some, yes.

10 Q In general where does the complaint, once a
11 complaint is taken by a patrol officer, where does it get
12 forwarded to?

13 A If it's not closed by arrest during the time of the
14 incident, it is forwarded on to a detective to be reviewed.
15 Depending on the case, it depends what or where it goes, what
16 detective it goes to.

17 Q And depending on what detective it goes to, does
18 that determine potentially how much follow up is done on a
19 complaint?

20 A Absolutely.

21 Q And over the course of a week -- withdrawn.

22 So you said on cross-examination how, on
23 information and belief could you explain what that means and
24 what it means to you and what it meant on February 5th, 2019?

25 A It meant that -- it meant that when I read the

Giarrano - Glaberson - Redirect

1 report, I believed and knew that Devante Nance was wanted as
2 a suspect for this crime.

3 Q When you say arrest on information and belief, what
4 does that mean?

5 A The information that I believe was that he
6 committed assault with a hammer.

7 Q But what does the term "information and belief",
8 what does that mean to you?

9 A It's how we can sign on charges. It's information
10 and belief or direct knowledge.

11 Q Those are two different things: "Information and
12 belief" and "direct knowledge"?

13 A Yes.

14 Q And so could you just explain to us in more detail
15 what you mean by information and belief?

16 A It's information that I have that I believe to be
17 true so I'm signing on it for the complaint.

18 Q And in this particular case, the information you
19 had is included in Exhibit 3?

20 A Yes.

21 Q And the reason that you believed it to be true was
22 what?

23 A Because the suspect was IDed in the crime.

24 Q And was this at the time you were reviewing it an
25 official Buffalo police report that you regularly rely on in

Giarrano - Recross - Meyers Buth

1 your job?

2 A Yes.

3 **MR. GLABERSON:** Just one moment.

4 No further questions.

5 **MAGISTRATE JUDGE SCHROEDER:** Ms. Meyers Buth.

6 **MS. MEYERS BUTH:** Yes, please.

7 **RECROSS-EXAMINATION BY MS. MEYERS BUTH:**

8 Q On cross-examination, Officer Giarrano, you said
9 that your understanding was that Mr. Nance was wanted for
10 felony assault?

11 A Yes.

12 Q What did you mean by "wanted"?

13 A He was a named suspect in an assault that occurred.

14 Q But you also said that there was no warrant out for
15 him, right?

16 A No.

17 Q So if someone is a suspect in a crime and there's
18 no warrant, can you simply get him out of a parked car and
19 arrest him?

20 A Yes.

21 Q Did the government review with you the other
22 screenshots relating to the assault from the computer system
23 before you testified today?

24 A Like the tabs of the incident?

25 Q Yes.

Giarrano - Recross - Meyers Buth

1 A No.

2 Q I want to show you what the government's marked as
3 5A, 5B, and 5C, and I'd like you to look at those and then
4 tell me when you're done, okay?

5 **MAGISTRATE JUDGE SCHROEDER:** Put it on the ELMO so it
6 will be easier to read, please.

7 Q Here's 5A. And let me know when you can read that
8 okay.

9 (WHEREUPON, a discussion was held off the record.)

10 Q Can you read this?

11 A Yes, I can see. Can I -- can I ask just a question
12 if you can see the words better than I can for the one that's
13 blue, I just have a hard time seeing the end part of it.

14 Q Can I approach, Judge, and show him the...

15 A Okay.

16 Q Before I ask you any questions about that, let me
17 show you 5B and 5C, okay. Here's 5B. Okay.

18 A Yes.

19 Q Now I'm going to show you 5C.

20 A Yes.

21 Q And those are, those are all screenshots of the
22 same computer system you had testified about, right?

23 A Yes. Some of them were from case management which
24 I do not have the ability to see.

25 Q Did prosecutors show you these before you

Giarrano - Recross - Meyers Buth

1 testified?

2 A I don't believe so.

3 Q And they seem to indicate that the reason that it
4 indicates "cleared arrest" on the assault report is because
5 Mr. Nance was arrested on a different charge, being the
6 narcotics that you found him in possession of; would you
7 agree with that?

8 A That is what a detective wrote. I have no input on
9 what he types in.

10 Q And so on Exhibit 5B when it indicates suspect was
11 arrested on a different incident and brought back to C
12 District, the different incident they're referring to is the
13 possession of narcotics --

14 A I believe --

15 Q -- not assault, right?

16 A I believe so but that's a detective's notes.

17 Q And you're not familiar with these particular
18 formats, is that your testimony?

19 A I understand how they work but I don't use them.

20 Q Okay. Fair enough. And would you take issue with
21 the fact that someone wrote in there that Mr. Nance was
22 arrested on a different charge, not the assault and was
23 brought back to C District on that other charge?

24 A I would. I would say that's incorrect.

25 Q And in terms of your recollection, as you sit here

Giarrano - Recross - Meyers Buth

1 today, you're unclear whether there were charges placed on
2 him for assault and also narcotics, correct?

3 A Yes, I believe he was charged with the assault and
4 then he was charged with the narcotics, as well, so it was
5 two separate cases.

6 Q And he was charged after you arrested him?

7 A Yes.

8 Q And so if that's true, there would be Buffalo city
9 court paperwork, is that your testimony?

10 A I believe it would be.

11 Q And you've not seen that, you've not been shown
12 that, right?

13 A No.

14 Q And if it turns out there's no Buffalo city court
15 paperwork and he was never arrested on the assault, then our
16 conclusion is that you're just mistaken about that?

17 A Yes, I wouldn't, like I said, I wouldn't know.

18 **MS. MEYERS BUTH:** Thank you, Judge.

19 **EXAMINATION BY MAGISTRATE JUDGE SCHROEDER:**

20 Q Officer, I want you to clarify something for me.

21 You testified that your routine is that when you
22 report for duty, one of the first things you do is review
23 reports that have been filed the prior day or that day?

24 A Yes.

25 Q And what was the workweek you were working in

Giarrano - Examination by Judge Schroeder

1 February, at the beginning of February.

2 A February 5th was my first day back at work after
3 being off.

4 Q And so would you review all the reports that were
5 generated from the last day worked until the first day worked
6 in February?

7 A Yes.

8 Q And is that what you did?

9 A Yes, I would have probably done, like, five or
10 seven days prior.

11 Q And how would this review take place?

12 A So through the system you can search by district
13 and dates. There's a couple different searching options.

14 Q So you would look at all of the reports filed for
15 the district for that time period?

16 A They would -- all the reports would show on a list
17 and I could click on the ones I'd like to look at.

18 Q And these would be C District reports?

19 A I usually look at C and then E district because a
20 lot of the crime that occurs connects the two.

21 Q I was going to say C District is probably one of
22 the busiest districts, isn't it?

23 A It's the most violent but almost the least busy.

24 Q I'm sorry?

25 A It's, I believe, statistically it's the most

Giarrano - Examination by Judge Schroeder

1 violent but it's the least -- second least busiest in the
2 city.

3 **Q** Is that the Bailey Langfield?

4 **A** Bailey Langfield I believe is the busiest.

5 **Q** That's D?

6 **A** That's E. Ferry Fillmore is C.

7 **Q** Bailey Langfield is E?

8 **A** E.

9 **Q** C is?

10 **A** Ferry Fillmore. So it covers all the way from
11 Ferry all the way to roughly William.

12 **Q** Okay. And so you would scroll through all those
13 reports?

14 **A** Yes, I scroll through them and then the ones I'd
15 like to read or get more information on, I click on them and
16 open them up.

17 **Q** And how do you determine which ones are the ones
18 you think you should read more about?

19 **A** Shots fired, any homicides, weapons possession
20 arrests. So our nonfatal shootings show up as assaults, so I
21 usually click on most of the assaults to see if a shooting
22 did occur.

23 **MAGISTRATE JUDGE SCHROEDER:** All right. You're excused
24 officer. Thank you.

25 **MR. GLABERSON:** Judge, if it's okay, if we could take

Ammerman - Direct - Glaberson

1 just a two-minute recess.

2 **MAGISTRATE JUDGE SCHROEDER:** Sure. We'll recess until
3 12:00.

4 **MR. GLABERSON:** Thank you, Judge.

5 (WHEREUPON, witness excused and recess taken.)

6 (Open court, defendant present:)

7 **THE CLERK:** Back on the record in United States vs.
8 Devante Nance.

9 **MR. GLABERSON:** Government calls Ronald, police officer
10 Ronald Ammerman.

11 **MAGISTRATE JUDGE SCHROEDER:** All right.

12
13 **RONALD AMMERMAN**, called as a witness, being duly sworn,
14 testifies as follows:

15 **MR. GLABERSON:** May I inquire.

16 **MAGISTRATE JUDGE SCHROEDER:** Yes.

17 **DIRECT EXAMINATION BY MR. GLABERSON:**

18 Q Good afternoon, Officer.

19 A Good afternoon.

20 Q Could you tell us what you do for living?

21 A Police officer for the city of Buffalo.

22 Q And how far did you go in school?

23 A I'm sorry.

24 Q How far did you go in school?

25 A In school, I have an Associates in criminal

Ammerman - Direct - Glaberson

1 justice.

2 **Q** How long have you been with the Buffalo Police
3 Department?

4 **A** Just under five years.

5 **Q** Could you explain how you got entry to the police
6 force and what your different duties have been since you
7 gained entry?

8 **A** I gained entry by completing the Buffalo police
9 academy and my duties are patrol, respond to calls and serve
10 the community.

11 **Q** In February of 2019, were you working with Jake
12 Giarrano?

13 **A** I was.

14 **Q** And specifically on February 5th, 2019, were you
15 and he partners for that tour?

16 **A** We were.

17 **Q** And what hours were you working?

18 **A** We were working 3:30 p.m. to 1:30 a.m.

19 **Q** Now, could you tell us on that day what happened in
20 the beginning of your tour before you left -- well, what
21 district were you assigned to at that time?

22 **A** C District.

23 **Q** What are the general geographical limitations in C
24 District?

25 **A** So C District is from East Ferry south to a little

Ammerman - Direct - Glaberson

1 past William as east almost Cheektowaga and then as west to
2 Jefferson.

3 **Q** Now do you work a particular geographic sector or
4 do you have a more general responsibility?

5 **A** No, we were -- we can go through the whole
6 district. We don't have a geographical sector.

7 **Q** Now prior to you going out on the street on
8 February 5th, 2019, was Officer Giarrano reviewing computer
9 records?

10 **A** He was.

11 **Q** And what happened -- what discussions did you have
12 with him while that was happening?

13 **A** He regularly, if not every day, will go through
14 past reports or violent crimes and high priority crimes and
15 he showed me a report for an assault that happened on Norway.

16 **Q** Norway Park?

17 **A** Yes.

18 **Q** Is that a street within C District?

19 **A** It is.

20 **Q** And then what happened after your meeting and after
21 you went into the field?

22 **A** We have a program on our computer that we can look
23 up past mugshots and records of people. So we ran the name
24 and then I reviewed a photo of the suspect involved in the
25 case.

Ammerman - Direct - Glaberson

1 **Q** Who was the suspect?

2 **A** Devante Nance.

3 **Q** Had you, prior to that day at least, ever
4 encountered him before or recognized the name or photo?

5 **A** I'd never dealt with him or seen him before.

6 **Q** Before that day?

7 **A** Yes.

8 **Q** Now, shortly after 4 p.m. who was -- you were in
9 your vehicle, correct?

10 **A** Yes.

11 **Q** And where were you going in general at that time?

12 **A** We were -- like when we entered the vehicle and
13 were going?

14 **Q** When you got into your police car.

15 **A** Yeah, we were headed towards Norway.

16 **Q** And you were in uniform?

17 **A** I was.

18 **Q** And it was a marked police vehicle?

19 **A** Yes.

20 **Q** What kind of vehicle was it?

21 **A** I believe it was a Tahoe.

22 **Q** When you got on to Norway who was driving and who
23 was the passenger?

24 **A** I was driving and Jake was the passenger.

25 **Q** What happened when you were driving -- when you got

Ammerman - Direct - Glaberson

1 to Norway, what direction were you going?

2 A We were traveling north on Norway.

3 Q Tell us what was going on when you were driving
4 north on Norway.

5 A As we were driving north on Norway, my partner saw
6 who he believed the suspect was in the assault that we
7 reviewed earlier. We kind of turned around and noticed him
8 walking. He was walking south, we were driving north and the
9 whole time he was kind of looking at our patrol car. We then
10 turned around the median and came back south on Norway. And,
11 as we were doing that, the suspect entered into a vehicle
12 that was parked on Norway.

13 Q Can you tell us anything about the windows of that
14 vehicle?

15 A Yeah, it was tinted past the legal limit.

16 Q Did you say past the legal limit?

17 A Yes, sir.

18 Q How do you know, how did you gauge -- well, have
19 you made stops for tinted windows in the past?

20 A Mm-hmm.

21 Q And how do you gauge when you're just driving by,
22 how do you make that determination that you believe it to be
23 past the legal limit of tint?

24 A Lots of experience, and our patrol vehicles have
25 the maximum allowed tint on them. So if they're darker than

Ammerman - Direct - Glaberson

1 your patrol vehicle windows, then they're not legal.

2 Q Then they're too dark?

3 A Yes, sir.

4 Q That particular patrol vehicle had those same tints
5 on them --

6 A Yes, sir.

7 Q -- that you were driving that day?

8 A Yes.

9 Q We've got to the tinted vehicle. Where did you go
10 and where did Officer Giarrano go?

11 A I approached the driver's side and Officer Giarrano
12 approached the passenger side.

13 Q Now, did you have a conversation with the driver?

14 A I did.

15 Q In substance, what did you say to him, what did he
16 say to you?

17 A The regular: License, registration. And just told
18 him, you know, we're here because your windows are too dark
19 and that was about it.

20 Q That's not why you were there, though?

21 A No.

22 Q And could you explain, based on your five years of
23 experience, why were you telling the driver that his windows
24 were too dark to get a license and registration from him?

25 A Just because the suspect that was involved was

Ammerman - Direct - Glaberson

1 involved in a violent crime. So to keep it calm and
2 peaceful, without just going in and saying hey, you know,
3 you're wanted for this assault, we let them know it could be
4 something as simple as a ticket so that we can, you know, go
5 through it with it being as peaceful as possible.

6 **Q** And so you did inform the passengers that you were
7 approaching them because of the tint?

8 **A** Yes.

9 **Q** Now, did Officer Giarrano indicate to you or
10 confirm to you that it was, in fact, the suspect that he
11 had --

12 **A** He --

13 **Q** -- recognized?

14 **A** He did.

15 **Q** How did he do that?

16 **A** He asked for the suspect's ID. The suspect
17 voluntarily gave it to Jake -- or Officer Giarrano, and he
18 read the name out loud and then looked at me and kind of gave
19 me the head nod over the top of the car that it was who he
20 thought it was.

21 **Q** Now, ultimately you filled out a bunch of paperwork
22 related to an arrest with the narcotics that were recovered
23 in this case?

24 **A** Yes.

25 **Q** And you filled out an official Buffalo police

Ammerman - Direct - Glaberson

1 department police report for that arrest?

2 A Yes, sir.

3 Q Okay. I'm going to show counsel and then hand out
4 what's marked 9A and 9B for identification. Take a look at
5 those two pages and tell me if you recognize them.

6 A I do.

7 Q And what are they?

8 A It's the Buffalo police report for the narcotic
9 arrest that we made that day.

10 Q Of Devante Nance?

11 A Yes, sir.

12 MR. GLABERSON: Your Honor, I would offer Exhibits 9A
13 and 9B into evidence.

14 MS. MEYERS BUTH: I don't have any objection to this
15 one.

16 Q So I'll put it --

17 MAGISTRATE JUDGE SCHROEDER: Wait a minute. There being
18 no objection, Government Exhibits 9A and 9B are received in
19 evidence.

20 Q And just to be clear, 9A and 9B are two pages of
21 the same document?

22 A Yes.

23 Q Page 1 and Page 2?

24 A Yes.

25 Q So I'll put it on display on the screen.

Ammerman - Direct - Glaberson

1 Do you see that, Officer?

2 A I do.

3 **Q** So, (indiscernible) in the Buffalo Police
4 Department report system, what is the process goes through?

5 A Yeah. So, there's two ways. One which is the
6 more, most of the time is that the police themselves will put
7 this report in their computers. There are some occasions
8 where the paper copy will be put into a bin and then a report
9 technician will input from the paper copy what the officer
10 wrote.

11 **Q** And in this particular case, the offender is listed
12 about three our four lines down?

13 A Mm-hmm.

14 **Q** As Devante Nance?

15 A Yes.

16 **Q** And the offenses for which he was charged were
17 listed about halfway down on the arrest number line?

18 A Yes.

19 **Q** And what are those offenses?

20 A Possession of -- criminal possession of a narcotic
21 with intent to sell. I believe that's a weight charge for
22 the drugs. And obstruction of governmental administration
23 for resisting, and then a discon.

24 **Q** And the items, the property that was recovered on
25 the arrest is listed as well?

Ammerman - Cross - Meyers Buth

1 A Yes, sir.

2 Q And what is that?

3 A Drugs and money and heroin.

4 **MR. GLABERSON:** I don't have any more questions for the
5 officer.

6 **MAGISTRATE JUDGE SCHROEDER:** Ms. Meyers Buth.

7 **CROSS-EXAMINATION BY MS. MEYERS BUTH:**

8 Q Good afternoon, Officer.

9 A Good afternoon.

10 Q Prior to your testimony, were you in the hall
11 speaking to Officer Giarrano?

12 A Prior to testimony -- in this hall, I'm sorry?

13 Q Yes.

14 A I have -- yeah, I did speak to him.

15 Q When Officer Giarrano got done testifying a few
16 minutes ago, he came out into the hall and spoke to you, did
17 he not?

18 A He did.

19 Q And did he talk to you about his testimony?

20 A Um, he said it was rough, is really what he said.

21 Q And you saw me sitting on a bench just a little
22 ways away from you, right?

23 A Yes, ma'am.

24 Q And he told you some of the questions that he was
25 asked and why it was a little rough, did he not?

Ammerman - Cross - Meyers Buth

1 A Um, yes.

2 Q Okay. When, when you left C District on
3 February 5th, 2019, after having reviewed with Officer
4 Giarrano the police report on the assault in which Mr. Nance
5 was a suspect, was it your intention to head from C District
6 to headquarters right over toward Norway?

7 A I don't recall our intention.

8 Q In other words, he showed you a report that he
9 found interesting and was there a plan between the two of you
10 that you would ride over and see if you could find the
11 suspect?

12 A Yes but there was more than one -- I can't remember
13 but I'm assuming there was more than one report that day. So
14 we ride around the entire district multiple times a day. I
15 don't know if our direct intention was to go straight to
16 Norway or not.

17 Q Do you recall where else you would have went after
18 leaving the C District headquarters and prior to arriving on
19 Norway?

20 A No.

21 Q So the first thing you recollect is going over to
22 Norway and that's when you saw Mr. Nance, correct?

23 A Yes.

24 Q And when you reviewed the report on the computer
25 that Officer Giarrano drew your attention to, that was a

Ammerman - Cross - Meyers Buth

1 report, not a criminal complaint, am I correct?

2 A Yes.

3 Q So at the time that you reviewed the report, there
4 were no criminal charges for assault against Mr. Nance that
5 had been filed, true?

6 A There was criminal charges on the report.

7 Q Who filed the criminal charges?

8 A The officer that reported to the call of the
9 assault.

10 Q And was there a supporting deposition from the
11 purported victim?

12 A I believe so but I don't recall.

13 Q Who was the purported victim?

14 A I don't know.

15 Q So was there a warrant out for Mr. Nance?

16 A There was not a warrant, no.

17 Q So if Mr. Nance had been charged, would he have
18 been charged in Buffalo city court?

19 A That would be up to who charged him. He would go
20 to Buffalo city court. I don't know if he would have been --
21 yes, he would have been charged in the city, yeah.

22 Q And if Mr. Nance was not present because he hadn't
23 been arrested, a warrant could be issued for his arrest, is
24 that your understanding?

25 A Yes.

Ammerman - Cross - Meyers Buth

1 **Q** But did not see a warrant and weren't aware of one
2 at the time that you encountered Mr. Nance?

3 **A** Correct.

4 **Q** Why isn't there?

5 **A** Why was there no warrant for his arrest.

6 **Q** Yes?

7 **A** I mean, I would assume -- the process takes longer
8 than the time that the report was in the system.

9 **Q** Had you talked to anybody before you went looking
10 for Mr. Nance to determine whether there was a warrant?

11 **A** No.

12 **Q** Did you become aware at any point after Mr. Nance's
13 arrest on February 5th that there had been a warrant issued
14 for his arrest prior to February 5th?

15 **A** No.

16 **Q** Nobody ever told you that, correct?

17 **A** Correct.

18 **Q** Who was the assigned detective or a case officer
19 for the felony second?

20 **A** I don't recall. I believe it was Fisher was the
21 last name.

22 **Q** Did you speak with Detective Fisher to see if he
23 wanted you to go out or needed you to go out to look for
24 Mr. Nance on February 5th?

25 **A** I did not.

Ammerman - Cross - Meyers Buth

1 **Q** And based on your experience on the force, if a
2 crime victim comes in and is credible and gives a statement,
3 they would fill out a supporting deposition, would they not?

4 **A** It all depends on the case.

5 **Q** If it was a serious assault with a hammer and the
6 person was injured, you would expect that criminal charges
7 would be filed imminently, right?

8 **A** No, I've been to multiple times where there's been
9 worse assaults where they don't file right away.

10 **Q** Okay. But in this case they did file right away is
11 your testimony?

12 **A** They filed a report, yes.

13 **Q** Filed a report?

14 **A** Right.

15 **Q** But did not file necessarily criminal charges,
16 right?

17 **A** I don't know if they gave a statement to anyone. I
18 don't remember -- I don't recall that being -- I don't
19 remember.

20 **Q** And it would be necessary for a victim to give a
21 statement prior to filing a criminal charge, generally,
22 right?

23 **A** Um, all I know is that if the report was in the
24 system that there was charges laid on that report. I'm not
25 sure if the complainant had signed a deposition or not, if

Ammerman - Cross - Meyers Buth

1 they did or not, I don't know.

2 Q You were involved in the arrest of Mr. Nance, was
3 that for narcotics or was that for an assault?

4 A Narcotics.

5 Q And you never testified on any assault charge in
6 Buffalo city court or Erie County court, correct?

7 A No, ma'am.

8 Q Do you know whatever happened to the charges that
9 you say were laid for assault against Mr. Nance?

10 A I don't know.

11 Q Do you know, from speaking to any of your fellow
12 officers, whether any of them ever went to court on any
13 assault charge against Mr. Nance?

14 A I don't recall.

15 Q Do you remember Mr. Nance telling you and Officer
16 Giarrano on February 5th he didn't know anything about the
17 assault charge?

18 A I remember him not knowing, yes.

19 Q And when, when you first saw Mr. Nance, your
20 vehicle was headed northbound on Norway; is that correct?

21 A Yes.

22 Q And he was on the west side of the street meaning
23 he was on the other side of the median from you, correct?

24 A Correct.

25 Q And when you turned around and came back, tell me

Ammerman - Cross - Meyers Buth

1 the manner in which you parked your patrol vehicle.

2 A Parallel to the car with the tints.

3 Q In a way that would prevent the car from pulling
4 out on to Norway southbound, correct?

5 A Negative, no.

6 Q Okay. Why wouldn't you have pulled up so that the
7 car you wanted to investigate couldn't pull away?

8 A Um, we operate different ways at different times.
9 Again it would be something that would make it a lower stress
10 scenario where if he thinks we're boxing the car in, maybe
11 now he feels trapped and needs to run because maybe -- and
12 I don't -- just because he says he doesn't recall the
13 assault, maybe he knew it happened or maybe he thought
14 something else was going on. It's very common that people
15 react different ways depending how aggressively you approach
16 the situation.

17 Q So what you're telling us is that you knew that you
18 were going to arrest him for an assault and you pulled in in
19 a manner so as not to alert him to your true intention, fair
20 enough?

21 A Fair, yeah.

22 Q You got out of the vehicle and Officer Giarrano got
23 out of the vehicle, he went to the passenger side, you went
24 to the driver, right?

25 A Correct.

Ammerman - Cross - Meyers Buth

1 **Q** Approximately how long was Officer Giarrano at the
2 passenger side before he had Mr. Nance exit the vehicle?

3 **A** Two minutes or less probably.

4 **Q** In the time that you were standing at the driver's
5 side, could you see into the vehicle?

6 **A** Yes.

7 **Q** Could you see Mr. Nance sitting in the passenger
8 seat?

9 **A** Yes.

10 **Q** Did you observe Officer Giarrano speak to
11 Mr. Nance?

12 **A** Yes.

13 **Q** At any time during that two minutes or less that
14 you observed inside the vehicle, you didn't see any
15 indication of criminal activity, did you?

16 **A** No.

17 **Q** And the driver was cooperative and followed your
18 instructions in producing his ID?

19 **A** Yes.

20 **Q** Never charged him with any illegal tints on the
21 vehicle, right?

22 **A** Did not.

23 **Q** Never had the driver get out of the vehicle, true?

24 **A** I don't recall. I don't remember.

25 **Q** When -- did you hear Officer Giarrano ask Mr. Nance

Ammerman - Cross - Meyers Buth

1 for identification?

2 A I did.

3 Q And up until that point, Mr. Nance hadn't said
4 anything to you or Officer Giarrano, had he?

5 A I don't remember. I don't think so.

6 Q Okay. He, for example, he hadn't been
7 uncooperative or used abusive or profane language, right?

8 A I don't believe so.

9 Q And when you or Officer Giarrano asked him for ID,
10 Mr. Nance produced ID, right?

11 A Yes.

12 Q And he didn't delay in that, there were no furtive
13 movements that he engaged in, right?

14 A He didn't give the ID like a normal person would.
15 He bladed himself facing more towards me and covered the
16 satchel that was on him when he gave the ID.

17 Q And when you say bladed himself, that's a police
18 term meaning that you turn your body, right?

19 A Correct.

20 Q But nothing indicative of criminal activity by
21 doing that, correct?

22 A No criminal activity, just a rise in suspicion is
23 all.

24 Q And he wasn't -- you wouldn't describe him as being
25 fidgety or overly nervous or any of those types of things,

Ammerman - Cross - Meyers Buth

1 right?

2 A Nervous for sure. Not fidgety.

3 Q What physical -- not fidgety. What physical
4 observations of Mr. Nance did you make that led you to
5 believe he was nervous?

6 A The way in which he took the ID out and turned his
7 body and how his eyes were moving, how, how he was acting in
8 the car.

9 Q How were his eyes moving?

10 A Just like, kind of like back and forth, you know, I
11 could tell that something was going on rather than someone
12 just being IDed by being a passenger in a vehicle.

13 Q Okay. And Officer Giarrano would have seen that,
14 too, correct?

15 A I have no idea what he saw. I'm sure he could have
16 seen it.

17 Q Well, it would be in his field of vision, fair
18 enough?

19 A Sure.

20 Q And that's something that would have been important
21 to note in terms of, you know, your police training whether
22 or not somebody was looking back and forth between the two of
23 you, right?

24 A Notes like mental note.

25 Q Noted, yeah?

Ammerman - Cross - Meyers Buth

1 A Yeah, sure.

2 Q And you've been involved in many arrests and
3 drivers and passengers often get nervous when they're stopped
4 and approached by police, true?

5 A True.

6 Q And he didn't say anything indicating he was
7 nervous?

8 A I don't recall. I don't think so.

9 Q And your primary focus at that time was on the
10 driver, fair enough?

11 A I'd say so, I guess, pretty much the whole
12 situation, but, yeah, I'm closer to the driver so that's who
13 I see more of.

14 Q Other than passing Officer Giarrano the
15 identification, he didn't make any other movements at all
16 while he sat in the passenger seat isn't that true?

17 A Not that I can recall.

18 Q And he waited for officer Giarrano to look at the
19 identification and then at some point Officer Giarrano asked
20 him to -- told him to step out of the vehicle, right?

21 A I don't know if he told or asked.

22 Q Did he indicate to Mr. Nance at that point why he
23 was asking him to step out of the vehicle?

24 A I don't recall when he told him why he was asking
25 him to do it or not but I know he was told like before he was

Ammerman - Cross - Meyers Buth

1 ever in custody that he is named in a report or named in an
2 assault.

3 Q He's named in an assault. There was no warrant as
4 far as you were aware, correct?

5 A No.

6 Q Based on --

7 **MAGISTRATE JUDGE SCHROEDER:** No, it's not correct or --

8 A There was no warrant to my knowledge.

9 **MAGISTRATE JUDGE SCHROEDER:** All right.

10 Q So without a warrant and without any indication of
11 criminal activity, are you allowed to arrest somebody when
12 they're just sitting in a parked car?

13 A At the time from information and belief and being
14 named in a report, we were allowed to.

15 Q You think you're allowed to arrest somebody without
16 a warrant when there's no indication of present criminal
17 activity based on a police report that was filed six days
18 before, that's your testimony?

19 A With pending charges on them, yes.

20 Q Is there a document that you reviewed prior to
21 testifying that indicates he had pending charges?

22 A The report in the system is pending charges.

23 Q Report in the system meaning what we previously
24 marked as government's Exhibit 3 in this case?

25 **MAGISTRATE JUDGE SCHROEDER:** Put it on the ELMO, please.

Ammerman - Cross - Meyers Buth

1 **Q** Showing you what's been marked as Government
2 Exhibit 3 in this case. Where on this document does it say
3 that there were pending criminal charges and in what court?

4 **A** It was under offenses and to my knowledge that
5 means that they're being -- the charges are being pressed so
6 it's -- they're pending until they go through the system.

7 **Q** So I'm looking at this document Exhibit 3, it says
8 offenses?

9 **A** Yep.

10 **Q** Those are the offenses that the person made the
11 report about, are they not?

12 **A** I'm sorry, can you repeat that one time.

13 **Q** Sure. Those are the offenses that the person, the
14 complainant made the report about --

15 **A** Yes, ma'am.

16 **Q** -- right?

17 **A** Yep.

18 **Q** But that doesn't indicate that charges were filed
19 or in what court they're pending, true?

20 **A** True.

21 **Q** And you'd agree with me, Officer Ammerman, that if
22 there were not criminal charges pending for this assault and
23 there was no warrant, that you would have no legal right to
24 pull somebody out of a vehicle, absent some other evidence of
25 criminal activity?

Ammerman - Cross - Meyers Buth

1 **MR. GLABERSON:** Objection.

2 **Q** Correct?

3 **MR. GLABERSON:** Objection.

4 **MAGISTRATE JUDGE SCHROEDER:** Basis?

5 **MR. GLABERSON:** Calls for a legal conclusion.

6 **MAGISTRATE JUDGE SCHROEDER:** No. She's asking him about
7 his experience and training as a police officer as to what he
8 could do or not do in making an arrest. Overruled.

9 **A** I would say disagree with you.

10 **Q** You disagree with me?

11 **A** Yes.

12 **Q** Okay. In what sense?

13 **A** That I know that if there's filed charges on a
14 named suspect in a document at that time based on information
15 and belief, you are able to make an arrest.

16 **Q** What if the person had already been to court and
17 been arraigned and been released on his own recognizance or
18 on bail?

19 **A** Then he'd be released.

20 **Q** Well, how would you know that just based on
21 Exhibit 3.

22 **A** The report would be undated with an arrest. It
23 would say that he had been arrested.

24 **Q** Doesn't that say that on Exhibit 3?

25 **A** It might say that now because he has been arrested.

Ammerman - Cross - Meyers Buth

1 **Q** What did it say on February 5th?

2 **A** It probably didn't say -- it would have -- the
3 arrest section wouldn't be filled out.

4 **Q** Do you have a specific recollection as to what the
5 report said on February 5th?

6 **A** Um, no, I don't.

7 **Q** In your experience if an assault victim came in and
8 filed a report and had obvious injuries, would pictures be
9 taken at the station or at C District?

10 **A** It's on a case-to-case basis. It depends on what
11 the detective would like to do or if there's officers there
12 that do it. It's not, it's not every time.

13 **Q** Now you indicated that when Officer Giarrano showed
14 you the report, you took a look at some mugshots of
15 Mr. Nance, is that true?

16 **A** I did take a look at some mugshots, yeah.

17 **Q** What other background information did you get? Did
18 you look, for example, at who the complainant was or what his
19 background was?

20 **A** The complaint of the assault?

21 **Q** Yes.

22 **A** I don't believe so, no.

23 **Q** Did you recognize his name as a drug addict from
24 the neighborhood?

25 **A** I did not.

Ammerman - Cross - Meyers Buth

1 **Q** You didn't know the name one way or the other?

2 A I -- nope.

3 **Q** Did officer Giarrano at any point when he got
4 Mr. Nance out of the vehicle tell him that he wanted to speak
5 to him about a police report that had been filed?

6 A I believe so, yes.

7 **Q** And he could have, he could have spoken to
8 Mr. Nance inside the vehicle or after he decided to get him
9 out of the vehicle, isn't that true?

10 A Sure.

11 **Q** He could have clarified whether Mr. Nance knew
12 anything about an alleged assault, right?

13 A He could have.

14 **Q** He could have asked him to voluntarily come down to
15 C District so that he could talk to him or he could give his
16 side of the story about the assault, right?

17 A He could have.

18 **Q** He didn't have to arrest him, in other words, he
19 had other options, correct?

20 A He could, yeah, he had other options.

21 **Q** And when he got him out of the vehicle, did he turn
22 him and pat frisk him right on the -- his own vehicle or was
23 it on the shoulder?

24 A I think he started to attempt to and then decided
25 not to -- to bring him over towards where I was for safety.

Ammerman - Cross - Meyers Buth

1 **Q** So, in other words, he gets Mr. Nance out of -- it
2 was a gold Volkswagen, right?

3 **A** I think so, yeah.

4 **Q** So he gets him out of the gold Volkswagen and while
5 he's still on the passenger side of that vehicle, he turns
6 around and starts frisking him there and then makes a
7 decision after he pat frisks him there that he's going to
8 walk him over to the patrol vehicle, true?

9 **A** I don't know how far he got with frisking on him.
10 I don't know if he even started or not. I just remember him
11 turning him towards the Volkswagen and then quickly walking
12 him around the front of the car.

13 **Q** But your testimony a few minutes ago was that your
14 best recollection is that he had been pat frisked against
15 that vehicle and then stopped and walked him around?

16 **A** No, I didn't say that. I said that he may have. I
17 don't, I don't know for sure.

18 **Q** He may have?

19 **A** Yeah.

20 **Q** You're speculating?

21 **A** Yeah.

22 **Q** So when he walked him over to the patrol car, did
23 he tell him he was going to put him in the patrol car and
24 that's why he had to frisk him first?

25 **A** I don't think it ever got that far.

Ammerman - Cross - Meyers Buth

1 **Q** When he walked him over to the patrol car, were you
2 able to observe Officer Giarrano frisk Mr. Nance?

3 **A** Yes.

4 **Q** And did he, in fact, frisk him?

5 **A** He searched him, yes, yeah.

6 **Q** And then at some point did you tell Officer
7 Giarrano "check the bag"?

8 **A** I don't believe so. I don't, I don't -- I don't
9 recall that. I could have.

10 **Q** Did you see Officer Giarrano then check the bag by
11 reaching into it?

12 **A** No. He attempted to.

13 **Q** He did attempt to reach into the bag. And was it
14 at that point that Mr. Nance then pulled away from him?

15 **A** Yes.

16 **Q** And although he was charged with obstruction and
17 disorderly conduct when he pulled away, he really sort of
18 bumped right into you because you were standing a couple feet
19 from where the pat frisk was going on, right?

20 **A** He pushed off, bumped in and ran through --

21 **Q** And how far did he get?

22 **A** -- maybe a yard.

23 **Q** Like the yard of a house or?

24 **A** I'm sorry, like 3 feet.

25 **Q** 3 feet?

Ammerman - Cross - Meyers Buth

1 A 3, 3 or 4 feet maybe.

2 Q So when you say he fled, he literally went from
3 here to here (indicating)?

4 A Yes, he attempted to flee.

5 **MAGISTRATE JUDGE SCHROEDER:** Let the record reflect that
6 counsel moved in a right to left direction of approximately 5
7 feet.

8 Q In other words, Officer Ammerman, there was nowhere
9 for him to go because Officer Giarrano was on one side of him
10 and you were on the other side, isn't that true?

11 A I disagree.

12 Q And Mr. Nance, your recollection is he's about five
13 six, 140, fair to state?

14 A Maybe. Yeah, I don't know -- I don't know how much
15 he weighs.

16 Q Fair to state that both and you Officer Giarrano
17 were higher than him and outweighed him -- or higher. Were
18 taller than him and outweighed him?

19 A I think we're probably similar heights, but, yeah,
20 I probably weigh more than him.

21 Q How much do you weigh?

22 A Right now I'm like 195.

23 Q About the same then, too right?

24 A I'm sorry.

25 Q About the same then, too, right?

Ammerman - Cross - Meyers Buth

1 A No. My weight fluctuates a lot.

2 **MS. MEYERS BUTH:** Judge, if I could just have a minute.

3 **MAGISTRATE JUDGE SCHROEDER:** Certainly.

4 (Pause in proceedings.)

5 **Q** Officer Ammerman, you're still partners with
6 Officer Giarrano, right?

7 A Um, it's hard to explain. We have a location so
8 sometimes I ride with different people but I would say, yes,
9 we still would ride together.

10 **Q** And I asked Officer Giarrano this -- and it's not
11 intended to embarrass you -- but there was a -- the both of
12 you gave testimony on a vehicle and traffic case in state
13 Supreme Court where Judge Wojtaszek found that your testimony
14 was not credible, do you remember that case?

15 A Yes, ma'am.

16 **Q** And you're familiar with Judge Wojtaszek's
17 decision, correct?

18 A I am.

19 **Q** And that was a similar scenario where you two had
20 pulled up on a vehicle and there was a black gentleman inside
21 the vehicle that you got out and you said the reason for
22 pulling up on the vehicle has tints, do you recall that case?

23 A I recall that case but I would argue that it's not
24 that similar.

25 **Q** It's not. In what way does it differ?

Ammerman - Examination by Judge Schroeder

1 A Because our intentions for pulling up on the
2 vehicle that Mr. Nance was in -- was because it was
3 Mr. Nance, not because of the tints.

4 Q Had nothing to do with the tints really?

5 A No, ma'am.

6 Q Did you ever tell the federal prosecutors here that
7 the reason you were suspicious and wanted to approach the
8 vehicle was because of illegal tints?

9 A No. I, I -- I don't recall that.

10 Q Did you tell them that the tints really had nothing
11 to do with this, that it was your plan to arrest Mr. Nance
12 because of a report that had been filed by a complainant for
13 an assault?

14 A Yes, ma'am.

15 **MR. GLABERSON:** No redirect.

16 **EXAMINATION BY MAGISTRATE JUDGE SCHROEDER:**

17 Q Officer.

18 A Yes, sir.

19 Q You indicated that when we broke for the break, you
20 were outside the courtroom and Officer Giarrano came to you?

21 A Yes.

22 Q And he discussed briefly what his testimony was?

23 A Um, yes, very briefly.

24 Q Did he talk about the report of February 5th, 2019?

25 A Not, not really --

Ammerman - Examination by Judge Schroeder

1 **Q** What did --

2 **A** -- to be honest.

3 **Q** What did he talk about?

4 **A** He just said that they had brought up the case
5 of -- the prior case.

6 **Q** The one that you were just asked about on the
7 credibility issue?

8 **A** Yes, sir.

9 **Q** Did he say anything else?

10 **A** Not that I could recall, no.

11 **Q** Okay. Miss Meyers Buth, would you put Government
12 Exhibit 9A on the ELMO, please?

13 **MS. MEYERS BUTH:** Thank you.

14 **MAGISTRATE JUDGE SCHROEDER:** Or Mr. Glaberson.

15 **Q** Officer, this is a report that you generated
16 somehow.

17 **A** Yes, sir.

18 **Q** I want you to look at the lines under the heading
19 offenses, do you see that?

20 **A** Yes.

21 **Q** And you are saying that the offenses that were
22 involved were criminal possession of narcotic drug with
23 intention to sell, correct?

24 **A** Yes, sir.

25 **Q** And then if you look down under arrest, it

Ammerman - Examination by Judge Schroeder

1 identifies the defendant and then you see the line saying
2 "status"?

3 A Correct.

4 Q And then "arrest type"?

5 A Okay.

6 Q "Crime in progress". That meant that you were
7 saying that there was an actual crime going on at the time
8 doesn't it?

9 A Um, yeah, I see it, yes, that means -- yeah.

10 Q And --

11 A Those, I'm sorry, sir.

12 Q Those -- that's your name, Ammerman?

13 A Yes, sir. Just so you know, the part after arrest
14 I don't fill out.

15 Q Well all I'm asking about is what the report says.

16 A Yes, sir, yep.

17 Q It talks about a crime in progress and it has your
18 name?

19 A Yes.

20 Q And as I look above as to what the crimes
21 apparently were or the offenses or I look below on the
22 description of crime in progress, it was criminal possession
23 of contraband, narcotic, criminal possession of narcotic drug
24 with intent to sell.

25 We've heard testimony about tinted windows, a

Ammerman - Examination by Judge Schroeder

1 parked car, and two people in the car. When I look at this
2 document about a crime in progress and drugs with intent to
3 sell, that would indicate you thought there was a drug deal
4 going on, would it not?

5 A No, that's --

6 Q It wouldn't?

7 A No, sir.

8 Q Well, how do you know that there were drugs with
9 intention to sell?

10 A Based on the amount and the packaging, it's not --

11 Q But, but we also have a notation: Crime in
12 progress. You got two guys sitting in a parked car with
13 tinted windows. Based on your experience in that district,
14 you're saying that that wouldn't give you some cause to think
15 that wasn't a deal going down?

16 A It could possibly have been but I don't know if it
17 was or not.

18 Q Isn't that what that description would cover, crime
19 in progress possession of drugs with intent to sell?

20 A The crime in progress, like I said, I don't put it
21 there and I don't know what that is referring to because, in
22 my mind, that would make it seem as if the crime is currently
23 going on when this arrest record is made after the fact so
24 I'm not sure why that's like that.

25 Q Was the driver ever arrested?

Ammerman - Examination by Judge Schroeder

1 A The driver was not.

2 Q This is the driver that was in the car with
3 Mr. Nance?

4 A Yes.

5 Q Okay. Thank you. You're excused.

6 A Yes, sir.

7 (WHEREUPON, witness was excused.)

8 **MAGISTRATE JUDGE SCHROEDER:** Mr. Glaberson.

9 **MR. GLABERSON:** Other than the fact that Ms. Meyers Buth
10 had displayed to the witness exhibits that are marked at
11 least 5A through 5D, we'd offer those into evidence to
12 complete the record.

13 But other than that request, we would rest -- the
14 government would rest.

15 **MAGISTRATE JUDGE SCHROEDER:** Let me ask you this: Did
16 you instruct Officers Giarrano and Officer --

17 **MR. GLABERSON:** Ammerman.

18 **MAGISTRATE JUDGE SCHROEDER:** -- Ammerman not to talk one
19 another while each was testifying?

20 **MR. GLABERSON:** In between I did not instruct them that
21 way.

22 **MAGISTRATE JUDGE SCHROEDER:** All right. On the
23 exhibits, Ms. Meyers Buth.

24 **MS. MEYERS BUTH:** I don't have any objection on those
25 exhibits.

US v. Nance - 20-CR-29

1 **MAGISTRATE JUDGE SCHROEDER:** Okay. The defendant having
2 no objection, Government exhibits ... which, 5A 5B?

3 **MR. GLABERSON:** 5A through 5D, so 5A, 5B, 5C and 5D.

4 **MAGISTRATE JUDGE SCHROEDER:** Are now admitted.

5 Does the government rest?

6 **MR. GLABERSON:** Yes, your Honor.

7 **MAGISTRATE JUDGE SCHROEDER:** Ms. Meyers Buth.

8 **MS. MEYERS BUTH:** Judge, I just spoke to Mr. Nance.

9 He's been housed at the Orleans County Correctional Facility
10 and although I did have an opportunity to review all of the
11 government exhibits with him, I did not have an opportunity
12 to adequately talk to him about his right to testify at this
13 hearing.

14 So I would ask for a brief continuance of the hearing so
15 that I could fully apprise him of his right to testify and my
16 recommendation in that regard.

17 And whether the Court, you know, wants to continue later
18 this afternoon or on a different date, you know, as long as I
19 have an adequate opportunity to speak to him and I feel
20 comfortable that he understands his rights, then we can
21 decide.

22 **MAGISTRATE JUDGE SCHROEDER:** Well, since Mr. Nance is
23 here and because he's housed in, where, Orleans County?

24 **MS. MEYERS BUTH:** Orleans, yeah.

25 **MAGISTRATE JUDGE SCHROEDER:** What I would prefer -- and

US v. Nance - 20-CR-29

1 I'll give you sufficient time -- is for you to meet with him
2 and go over what you feel you need to go over with him, as
3 well as advising him about his rights with respect to
4 testifying. And we can then pick back up it's now
5 approximately 22 minutes to 1. We could pick back up at
6 2:30.

7 Do you think that would give you enough time?

8 **MS. MEYERS BUTH:** Oh, plenty of time, Judge. I just
9 didn't want to inconvenience the Court but that would be
10 great.

11 **MAGISTRATE JUDGE SCHROEDER:** No. That way we can save a
12 trip transporting Mr. Nance from Orleans County. Before I
13 forget, I was reading a decision of the Supreme Court Justice
14 State of New York and it appears to me -- and maybe it was
15 just in the copying or the cutoff -- that the pages don't
16 seem to follow --

17 **MS. MEYERS BUTH:** Oh.

18 **MAGISTRATE JUDGE SCHROEDER:** -- right. So I was
19 wondering if I could get a better copy.

20 **MS. MEYERS BUTH:** Yeah, let me check. They copied
21 funny, judge. So let me check the two other copies I have
22 here. One's really super small print.

23 **MAGISTRATE JUDGE SCHROEDER:** Okay, for example, on
24 Defendant's Exhibit A, at the very last line it says *People*
25 *vs. Huntley* with the citation and then it says on consent of

US v. Nance - 20-CR-29

1 the people and the defendant. And then when I turn the page,
2 the next thing is Ronald Ammerman's departmental file
3 prepared in connection.

4 **MS. MEYERS BUTH:** Oh, I see. I think it was just the
5 way it was copied but I can supply a proper copy of the
6 decision to the Court.

7 **MAGISTRATE JUDGE SCHROEDER:** Yeah, just so it reads in
8 proper order and a copy to the government, as well --

9 **MS. MEYERS BUTH:** Yes.

10 **MAGISTRATE JUDGE SCHROEDER:** -- if they don't already
11 have it. All right. We will recess until 2:30.

12 (WHEREUPON, recess was taken.)

13 (Open court, defendant present:)

14 **THE CLERK:** Back on the record in the United States vs.
15 Devante Nance.

16 **MAGISTRATE JUDGE SCHROEDER:** Ms. Meyers Buth, have you
17 had an opportunity to confer with Mr. Nance?

18 **MS. MEYERS BUTH:** I have, Judge. I spoke with him at
19 length at the Marshal's office and explained his right to
20 testify and everything around that issue. And its his
21 knowing decision at this point not to take the stand. So we
22 have no other witnesses.

23 **MAGISTRATE JUDGE SCHROEDER:** All right. Am I correct
24 that assuming the parties are going to order a transcript?

25 **MS. MEYERS BUTH:** Yes.

US v. Nance - 20-CR-29

1 **MR. GLABERSON:** Yes.

2 **MAGISTRATE JUDGE SCHROEDER:** All right. And I'm also
3 assuming that post-hearing memoranda will be submitted.

4 **MS. MEYERS BUTH:** Yes.

5 **MAGISTRATE JUDGE SCHROEDER:** What I'm going to do, then,
6 is set a schedule that the post-hearing memoranda be
7 submitted no later than 30 days after the filing of the
8 transcript but I want reasonable prompt effort to be made to
9 order that transcript.

10 **MR. GLABERSON:** Yes, sir.

11 **MS. MEYERS BUTH:** Understood. Thank you, Judge.

12 **MAGISTRATE JUDGE SCHROEDER:** All right. Anything else
13 at this time?

14 **MR. GLABERSON:** No, your Honor, not from the government.

15 **MS. MEYERS BUTH:** Not from the defense, Judge.

16 **MAGISTRATE JUDGE SCHROEDER:** And Ms. Meyers Buth, does
17 the defendant understand and agree that the Speedy Trial
18 Clock continues to remain stopped since the motion is
19 considered to still be pending and the clock will continue to
20 be stopped until such time as the motion to suppress has been
21 resolved?

22 **MS. MEYERS BUTH:** He understands that. We discussed it
23 today again.

24 **MAGISTRATE JUDGE SCHROEDER:** All right. Thank you.

25 All right, everyone, thank you.

US v. Nance - 20-CR-29

1 | MR. GLABERSON: Thank you, Judge.

2 MS. MEYERS BUTH: Thank you.

3 (WHEREUPON, proceedings were adjourned.)

4

5

6

*

*

*

CERTIFICATE OF TRANSCRIBER

9 In accordance with 28, U.S.C., 753(b), I
10 certify that this is a true and correct record of proceedings
11 from the official audio recording of the
12 proceedings held in the United States District Court
13 for the Western District of New York before the
14 Honorable H. Kenneth Schroeder, Jr. on August 13, 2021.

15

16

17 S/ Diane S. Martens

18 Diane S. Martens
Transcriber

19

20

21

22

23

24

25